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REVIEW OF BOOKS.

Anti-Duello; or, The Duel's Anatomie: a Treatise in which is discussed the Lawfulness and Unlawfulness of Single Combats: a Discourse wherein is discussed this Question, viz. Whether a Christian Magistrate may lawfully grant a Duell. for deciding of the matter, when the true author of some fact committed cannot evidently be discovered? First printed in the year 1632. With a Preface, by the Editor, and an Appendix, containing, 1. The Case of Donald Lord Rea, and David Ramsey, Esq. in an Appeal of Treason, abridged from Rushworth; 2. Case of James Cluff, or Clough, who was executed at Tyburn, July 25, 1729, on an Appeal of Murder; 3. An Account of a Judicial Combat, fought at Paris, in the Year 1387, between John de Carogne and James le Gris, in an Appeal of Rape; 4. The History of an Interchangeable and Doubtful Accusation, tried by Combat, in Scotland, in the Reign of Edward VI, (anno 1548,) between Mr. Newton and Mr. Hamilton. 8vo. pp. 158. London. 1818.

ABOUT the middle of the last session of the late Parliament, and after the decision of the Court of King's Bench, in the Case of Abraham Thornton, who had been appealed of the murder of Mary Ashford, by William Ashford, her brother and next heir, His Majesty's Attorney-General gave notice, in his place, in the House of Commons, of his intention to make, on an early day, a motion,—not, as was ignorantly stated in the newspapers, “to abolish Trial by Battle,” but—“respecting Trial by Battle, and the Appeal of Murder.” The Honourable and Learned Gentleman has hitherto proceeded no further in the business; and, though the multitude of avocations which necessarily press on the time and attention of an individual holding that high public station which Sir Samuel Shepherd so honourably discharges, might, of itself, be thought sufficiently to account for the delay, still it is not

improbable, that a just perception of the extreme delicacy and complexity of the questions involved in this part of our common or customary law, a perception quickening with the Honourable and Learned Gentleman's progress in the investigation into which it must have been necessary that he should enter; it is possible, we say, that this just and learned perception may have contributed largely and usefully to the delay which has confessedly occurred. To whatever circumstance, however, the parliamentary pause of the Attorney-General is to be attributed, the present session of the new Parliament, has seen, in the preceding week, an Honourable Member, new, indeed, to the walls of the House, but already distinguished in a peculiar way, and bidding fair to become still more remarkable—smartly pressing on the slow heels of learning and knowledge, taking the words of the mouth of the Attorney-General and (probably with the advantage of disencumbrance of study and information) proposing, in one breath, to protect *ferrets* from poachers, and cut the Gordian knot of Trial by Battle! So true it is, that in affairs of this world, as well as in those of another, courage is often found to manifest itself in exact proportion with ignorance;

“And fools rush in, where angels fear to tread*.”

* Mr. Lawson is the new At-all of the House of Commons, a post some time since enjoyed by the late Mr. Whitbread. Mr. Lawson's performance of the part is much less grave, it must be confessed, than that of his predecessor, unless, indeed, when that gentleman became possessed of the invaluable joke of Ferdinand the Seventh and the shift of the Virgin Mary, by means of which he demonstrated, like an able politician, that the reign of Buonaparte would have been much less dangerous to Europe, than is that of the King of Spain. But Mr. Lawson, as we have said, is the new At-all; and the “merry jests” of that gentleman, whether expended upon turnpikes, convict ships, original sin, “tame wild beasts,” or Trial by Battle, are likely to prove of infinite service to the new parliament, amid the dull debates on cash-payments, bank-note engraving, and criminal law; unless, indeed, on some unlucky evening, a crabbed fellow-member should at once knock down the jest and the

“That (to use the words of a brother critic) *some* change or other” ought to be made in the law under which Abraham Thornton was appealed, is undeniable; and that a change may speedily be made, by the help of judicious hands, we must not only express our most anxious wishes, but breathe our warmest prayers! Never, again, may this country be disgraced by such proceedings (misnamed legal proceedings) as have been had in our courts, under modern notions of the Law of Appeals—and had even during the preceding year—proceedings permitted through ignorance of the real provisions of that law—and operating to the violation of the first civil rights, to the contradiction of every principle of personal security, to the contempt of trial by jury, and to the perpetration of oppression and murder under colour of public justice.

The urgency of the claims which the country possesses for a speedy and rational alteration of the law, is manifest from one or two considerations, among others, the weight of which, every mind will duly estimate. It will be remembered, that only the accidental circumstances under which the parties to the late Appeal of Murder appeared before the court, rendered the plea of Battle available, and saved

jester, with the heavy and merciless mace of common sense, public decency, and senatorial dignity. If dull, though flippant impertinence, however, should thus be silenced in the House of Commons, may true wit still and long survive, to cheer and instruct its benches, and prove, that wisdom is never more emphatically wisdom, than when she laughs!

“—The Benignant Sire,
To deck the honoured paths of just good,
Has added fair Imagination's ray.”

It has been well observed, by a learned and living judge, in New England, that the Parliament which beheaded Charles I, and enslaved his people, was a Parliament that never laughed. As to Mr. Lawson, the Honourable Member for Boroughbridge, we shall answer a very general and natural question, when we state that his age is twenty-five years. The Examiner, at his election, chuckled much at the prospect of having so bright a person on the Opposition side of the House, a place to which we should not be grieved to see him remove.

* Quarterly Review, February, 1818.

the community from witnessing a *second criminal trial*, in direct opposition to the established general and just maxim of our law, that no man shall be put into jeopardy of his life, on the same accusation, more than once; and under all those dangers, from the force of public prejudice and infuriated passions, which accompanied the course of that proceeding, and seemed to render the calm decision of justice, in the event of that second criminal trial, a hopeless expectation. It is to be remembered, that if the Appellor and Appellee had not been equally matched, in the eye of the law, and no excuse from Battle therefore admissible; had the Appellor or Appellee, being a woman, a clergyman, an infant, a man over age, or blind, or infirm of limb, or naturally or legally incapable of or exempt from Battle, then the Appellee must have been *ousted of his plea of Battle*, and would have been sent, lawfully or unlawfully, to a second jury—a jury possibly partaking in the popular prejudice, or liable to be *bullied*, by the popular voice, into a verdict contradictory of the verdict of the first jury;—a verdict, this second, which must have been conclusive to the prisoner, and, if against him, have consigned him to death, at the option of the private prosecutor, but beneath the misemployed arm of public justice, and in defiance of the merciful prerogative of the crown, and the possible outcries of the people!

It will be remembered, too, that in the specific case of Abraham Thornton, an English subject, after an acquittal of the charge brought against him, by "God and the country, was, upon the same charge, under colour of English law, arrested and imprisoned, and exposed to the peril of his life; and that when the Appellee had obtained the only legal object of his Appeal—namely, the awarding of Battle—the Appeal was abandoned—the Appellee permitted, in contempt of the law, to withdraw harmless from his Appeal,—and the Appellor simply dismissed, to bear his hardships and oppressions—to suffer under the consequences of the state and administration of the law—in what manner he might! And these things were perpetrated in an English court of justice, and in the commencement of the nineteenth century, and in the midst of a people, jealous, but ignorantly jealous, of English freedom! What, when these things were perpetrated against Abraham Thornton—what, when in his person, the dearest rights of all the people of England were violated, what was the conduct of

the bawlers for liberty, what was the conduct of the whole English press, and of the whole English public, and what was the justice rendered to the unfortunate victim of our defective code, either by the Courts of Law, or by that public which is so ready, with its sympathy and its money, when the cause of some worthless demagogue is in question; when the real interests of society are at stake, no private injury inflicted, but which can withhold both when those real interests are invaded, and an individual is really injured*? How much to be lamented is it not, that Abraham Thornton had not moved in a superior sphere of life! Had that been the case, we should have seen English freedom vindicated, and at what real peril an Appeal of Felony is made! We talk by rote, in England, about the impartiality of our laws. Doubtlessly, the laws themselves are impartial; but, to apply them impartially, how often is it not necessary to superadd wealth, station, and that figure in the world which commands the interest of those around us! Without the supposition of these, if any man should declaim to us concerning the impartiality of our criminal law, few considerations would prevent us from laughing in his face! Had Abraham Thornton been a person of rank or wealth, or had he been a traitor, a libeller, or a mover of sedition, one class of society or other, would have procured him that justice which our laws were confessedly competent, even in his case, to give! As to those who talk most of liberty, they were among the foremost (though they were not alone) in calling for the violation of freedom, in the person of that man; and they then evinced, in a striking manner, that whether the object of their malice is prince or minister of state, or a helpless prisoner at a private suit, the same ignorant zeal, the same substitution of passion for reason, and of *accusation* for *proof*, are their uniform characteristics.

We had proceeded thus far, in our introduction to the remarks which are to follow, on the pamphlet whose title we have transcribed, when we learned, that upon better advice, the Honourable Member, above alluded to, had restored the business of Trial by Battle

* Some explanations, as to the penalties legally applicable to the Appellee who abandons his Appeal, and as to the indemnification of the Appellor, are required here, for the justification of our Courts, but the reader must be referred, for their particulars, to Mr. Kendall's Argument, for construing largely the Right of an Appellee, &c.

and Appeal of Murder to the Honourable and Learned hands in which it was first held; and that the Attorney-General has given notice of a motion for Tuesday next. This change renders our promptest and gravest attention to the subject the more timely.

The late Mr. Fox, on occasion of an incidental conversation, which arose in the House of Commons in the year 1774, in reference to the measures at that time pursuing for the suppression of the revolt in the North American Colonies*, declared himself "for taking away the Appeal of Murder *entirely*, but not for taking it away *in part*." Mr. Fox, it is true, had reference to the taking away the Appeal of Murder in one part of the British dominions, and not taking it away in the whole; but still, as appears from other parts of his speech, his opinion was against the Appeal of Murder in all parts, and in all its own parts; and there is no doubt, that had an opportunity presented itself, for a renewal of the expression of his sentiments on the whole question, he would have retained his unqualified hostility. Mr. Fox, however, had not studied the matter closely; and was probably quite unaware of the grounds on which, in the course of the same debate, Mr. Dunning (afterward Lord Ashburton) described the Appeal of Murder as "that great pillar of the constitution†." The truth is, there are many nice and serious reasons, why the Appeal of Murder (with the other less important Appeals of Felony) should remain unabolished.

But, to the Appeal, belongs, of necessity, and as a general rule, the Trial by Battle; for an Appeal is an Appeal to Battle; it is conceived in the form of a challenge, and intends a demand of the Court, to fight a duel under the sanction of the law. Now, the Trial by Battle is a subject of equal delicacy with the Appeal of Murder. It is a concomitant, not only of Appeals, in criminal cases, but of Writs of Right, in civil cases; and, while the claim of the subject is constitutional, to the Appeal and to the Writ, so, also, is his claim to defence, either of his life or of his property, by Battle. That obstacles environ an attempt to abolish Trial by Battle, may, in some degree, be guessed, from the abortive proceedings which were had upon the subject, in Parliament, between the years 1620 and 1641, an account of which

* See a complete report of this conversation in a subsequent part of the present Number of the Literary Journal.

† See as in the preceding note.

we extract from Mr. Kendall's Argument, page 135, where it is collected from the Journals of the two Houses:—

"An Act for abolishing of Trial by Battle or Combat Bill read." *Journals of the House of Commons, Feb. 28, 1620.*

"Battle: Committed to Mr. Noy, Sir E. Mountague, &c. Presently, in the Committee Chamber." *Ibid. March 13, 1620.*

"Mr. Noy reporteth the Bill for Battle. The Bill to be re-committed; and counsel to be heard before the committee, on both parts." *Ibid. March 23, 1620.*

"Hodie the Earl Marshall reported the Bill, An Act to abolish all Trials by Battail, and joining of issue by Battail, in all Writs of Right, as fit to pass, with some amendments; the which amendments were presently twice read, and the Bill ordered to be ingrossed accordingly." *Journals of the House of Lords, March 19, 1623.*

"Mr. Solicitor reporteth the Bill of Battle, That the committee thinketh it not fit it should proceed; but rest to be advised of." *Journals of the House of Commons, May 29, 1623.*

"A message from the Lords, by Attorney and Mr. Serjeant Crook:—An Act to abolish all Trials by Battle, in Writs of Right:—committed to Sir Edward Coke, Mr. Noy, Sir William Fleetwood, all the lawyers of the House, and soldiers." *Ibid. March 22, 1623.*

"*Vice lecta est Billa*, An Act to abolish all Trials by Battaille." *Journals of the House of Commons, Feb. 25, 1640.*

"*Vice lecta est Billa*, An Act to abolish all Trials by Battaille; upon Question, committed unto Sir H. Anderson, &c." *Ibid. March 11, 1640.*

"Ordered, That the petition of Richard Lilbourne, gentleman, this day preferred to this House, shall be referred to the consideration of the committee for the Bill for Abolishing of Trial by Battaille, to be considered of when the committee shall be revived." *Ibid. July 23, 1641.*

Amid the difficulties on which we insist, and which will only be found to grow, upon the attempts to overcome them, it is, possibly, to be wished that Parliament and the public may ultimately come to the same conclusion as that to which the author just named is inclined, upon the only measure expedient to be pursued, and which, for the information of our readers, we shall presently state in his own words; in the mean time, we address ourselves, without further preparation, to our review of that which is, in reality, a second publication from the same pen, on the law under consideration.

The "Preface by the Editor," which occupies the larger half of the pages before us, is avowed, in the "preface" itself, as coming from the pen of the author of the "Argument."

The "Anti-Duello" has been sometimes attributed, upon what good authority we are not aware, to Sir Kenelm Digby. Be this as it may, it was first printed, as we learn, from Mr. Kendall's preface, in the year 1632, (being the seventh year of the reign of Charles I.) in the early part of which year, as well as in the latter part of the year preceeding, the public mind was much agitated by the occurrence and prosecution of an Appeal of *Treason*, on the part of Donald Mackay, Lord Rea, against David Ramsey, Esquire, one of the Gentlemen of the King's Privy Chamber; and it was re-printed by Mr. K. in consequence of the misapplication, by Mr. Chitty, in the court of King's Bench, on behalf of the Appeal, of a passage, which he had quoted in his Argument. The title-page of the pamphlet is, in truth, in some degree, though unintentionally, deceptive; the scope of the pages being, not directly against the Lawful Duel, Judicial Combat, or Trial by Battle, but against Appeals, of which Trial by Battle is the immediate object. The source of the error is thus explained by Mr. K.

"Nothing can be more excusable than a mistake of the real aim of this somewhat antiquated treatise; a mistake originating in that total contrariety of the old and new ideas, severally attached to Appeals and to Duels, upon which so much stress has necessarily been laid, in the *Argument* already referred to*: in other words, in the total ignorance into which our own generation has fallen, as to the maxims and principles by which those that preceded it were guided, in framing and administering the law Appeals. The matter is, that an ancient, neglected, and forgotten provision of law, has, in the case in view, been resorted to; modern practice, and modern habits of thinking, have long since become estranged to its reason and its rules; and, to proceed in it rightly, we must make ourselves acquainted with the proceedings, sentiments, manner of thinking, and established propositions, of a previous age; all of which, in this case, have fallen into disuse, disrepute, or oblivion, and yet, unless now retraced, recovered, and re-entered into, and acted upon, we shall abandon ourselves to the most contemptible, as well as the most fatal, mistakes. We talk of the Battle which our ancestors established or practiced, with the same mal-adroitness that we should put on the armour which they wore; and apply their maxims as ungainly, and perhaps as mischievously, as, possibly, we should handle their weapons. It is very true, that some of the examples of the prosecution of Appeals of Murder, in our Courts, are

comparatively modern*; and that it is the examples of Battle alone that are becoming ancient. But the modern prosecutions by Appeal have, in reality, been conducted amid all that abject and deplorable ignorance which has just been insisted on, and which is not, at this day, exhibited for the first time. It is not enough for the welfare of the subject, that there are good laws, but there must also be good lawyers. Of the practice of the Courts of England, in matters of *libel*, it is related, of a distinguished living lawyer, that being told by the Court, that such or such a thing was so 'before he was born,' he, with a felicitous daring, answered, 'But it was so, because I was not born.' Lawyers of genius, diligence, and enterprize, have great occasions not unfrequently presented to them. Laws must be applied, as well as framed. Appeals of Murder, it is too certain, have heretofore been prosecuted amid the most grievous illegality, injustice, and oppression†. So, also, might the existing Appeal have begun and terminated, had the defence fallen into hands less able, or less bold, than those in which it is fortunately placed‡.

It is of great importance, adds Mr. K. to take notice of the occasion of writing the "Anti-Duello," namely, that of an Appeal of *Treason* (*treason*, as distinguished from other felonies at

* * Argument, page 43, et seq."

† In reference to the case of Slaughterford, (A. D. 1709) the Learned Counsel for the Appeal, Ashford against Thornton, is reported to have said, in his pleadings in the King's Bench, on the 7th of February last, "That if he (Slaughterford) could have had battle, in the perilous situation in which he was placed, he would no doubt have applied for it." This observation, from a lawyer, is surely a very extraordinary one. What did Slaughterford, or what does Thornton, know about battle? And to whom does Thornton owe the plea of battle, but to the legal conductors of his defence? The case of Slaughterford may be seen in the Argument, p. 43; and that statement, if accurate, may serve to set right another remark, that appears to have been made on the same occasion:—"Mr. Justice Bailey: According to your statement, there was no evidence of the actual murder: *the body was never found*?"—Mr. Chitty: No; the body was never heard of afterwards, and hence the presumption of the Appellee's guilt." It is due to the memory of Chief Justice Holt, to say, that the proceedings against Slaughterford do not, after all, seem to have been of so very foul a character as is here represented. According to the account quoted in the Argument, *the body was found*—The case of James Cluff, or Clough, executed in 1729, and which appears to afford a second melancholy example of the Appeal of Murder, and of second criminal trials, is printed at length, in the Appendix to these pages."

‡ An example of the simplicity of the multitude, on the subject of Thornton's trial, is afforded in a remark lately made by a person of decent education: "That he grieved for the situation of the lawyers who advised the Wager of Battle—because it had infallibly ruined their professional prospects!"

* * See the Argument, page 136, and the Observer Newspaper, Sunday, February 7th."

common law); because there are peculiarities belonging to Appeals of *Treason*, which expose us to serious errors, as soon as they are lost sight of.

"The *ANTI-DUELLO* proposes to discuss this question, 'Whether a Christian magistrate may grant a Duel, &c.*' and rests its objections upon the 'law eternal of God and nature†'; a course of argument which is open upon Appeals of *Treason*, but not upon Appeals that our law permits for any other crimes. In Appeals of *Treason*, the whole is in the sufferance and conscience of the King, 'the Christian magistrate' intended by our Author. Appeals of *Treason* are made by any subject, and in behalf of the Crown alone; and in these Appeals, therefore, the Crown may refuse its allowance from the beginning, or it may stop the progress at any subsequent period; and even the vanquished may experience the utmost plenitude of the royal mercy. But not so with Appeals of any other Felonies. These regard the wrongs of the subject; their allowance, under all reasonable circumstances, is, by the law of the land, the right of the subject; the Crown has no prerogative, in virtue of which they can be taken away; the conscience of the Crown is therefore absolved in the proceeding, with the merits of which it has, in reality, nothing to do. The 'Duel, for deciding of the matter, where the true author of some fact committed cannot evidently be discovered,' cannot, in any reasonable circumstances, and under the existing law, be withheld by the Crown; for it is secured to the Appellant by the coronation-oath of the sovereign, and by the obligations of Magna Charta, both of which forbid the sovereign to 'deny justice.'

"In fact, the reader begins to apprehend, (what he will presently be fully confirmed in) that the intention of the *ANTI-DUELLO* is to dissuade us from tolerating the practice of APPEALS, which are demands of DUEL, and not from withholding the DUEL, while we tolerate the APPEAL; which latter course would involve nothing less than the matchless absurdity of at once professing to maintain the law of Appeals, and yet defeating its regular and ordinary end; or, what is still worse, it would involve the illegal act of applying a law to an end, not only different from that for which it was established, but in direct and violent contradiction to it!

"Almost the whole question is stated in words which have been already cited from the pages that follow:—'a Duel for deciding of the matter, when the author of some fact cannot *evidently* be discovered; that is, 'cannot be discovered by means of human evidence.' This discovery is the intention of the Duel, and to procure this Duel, for this discovery, is the intention of the Appeal. So, the proposition, that 'the law which decrees

a Duel in default of proof, is found among the ancient Saliques*'; so, also, in stating the argument of the defenders of the Duel†, 'That many differences cannot be otherwise determined, nor many secret injuries come to light, but by this expedient‡'; and so, the Author's reply: 'For, ordinarily, a man is condemned because *proof* is brought against him; but here, quite the contrary, a man is condemned though nothing can be brought against him§.' 'For,' (it is added) 'can we, in any reason, draw this conclusion, that one man is a traitor, because another hath killed him||?'—'But the matter,' says the *ANTI-DUELLO*, 'which is properly in question is this: May a man this way serve his turn, to find out the truth of a fact which is unknown to us¶?' And the following is the answer given to this question: 'The Judges cannot be ignorant what is prescribed unto them by good laws; to wit, That in every doubtful case, the accused ought to have the advantage, and that they must pronounce in his favour: that the Accuser not proving the crime objected, the party charged ought to be acquitted**.' Thus, the intention of the law of Appeals is, to provide a supplement for the law of condemnation upon evidence; and the reason of allowing Battle, as the mode of defence upon Appeals is, that as the Accuser does not proceed upon evidence, and as the Accused cannot defend himself by evidence, therefore the Accuser may make that guilt manifest by his weapon, which must otherwise remain unpunished, or the Accused, by the same means, manifest that innocence which must otherwise sink under the accusation: 'He that is assailed,'

* Page 14."

† It is not unworthy of observation, that less than two hundred years have elapsed, since, as appears from the *Anti-Duello*, the popular feeling, in England, was in favour of the Duel, or Trial by Battle. Indeed, the great lawyers of the time of James I. and Charles I. plainly lean this way. The reader may consult, among other papers, seven tracts, of the dates of 1600 and 1601, by Davies, Whitlock, Holland, Agard, and others, preserved among the Cotton MSS., or printed in Hearn's *Antiquary Discourses*, and Gutch's *Collectanea Curiosa*. Smith, in his *Commonwealth of England*, as well as all other writers, attribute the decline of the Trial by Battle to the remonstrances and influence of the Roman Church; but seldom seems to exult in the obstinacy with which the practice has been retained by the English, who, he intimates, are not accustomed to bow to "such clergy canons." Of the favourableness of English ideas to its use and continuance, he instances the example of a certain mayor in Lincolnshire, which is known to be held upon condition, that the possessor, or his representative, shall appear, as the King's Champion, at his coronation, to challenge the disputants of his title to the crown. For accounts of the failures of several Parliamentary attempts to abolish Trial by Battle, see *Argument*, page 135.

* † Page 12"

* † Page 23"

* § Page 22"

* ¶ Page 5"

* ** Page 30."

says our Author, 'may repell force with force; it is a principle in nature, and a privilege granted by the laws*.'

"The argument against Duels (lawful Duels) was, in reality, in the time of the author of the *ANTI-DUELLO*, the ordinary form of arguing against Appeals. The Appeals that, in the later periods of English history, have most engaged the attention of writers, are Appeals of *Treason*†. In Appeals of *Treason*, no person ever dreamed of separating the Appeal from the Battle‡; and, hence, when writers

"* Page 8. In the same manner speaks Mr. (afterward Sir John) Davies, in his paper on the 'Antiquity, Use, and Ceremony of Lawful Combats in England, 22d May, 1601.' *Antiquary Discourses*, vol. ii, p. 110: 'If by the very law of nature, a man may defend his life with his life, when he is violently assaulted by his enemy, and hath no other means of escape, shall he not, by the same reason, defend his life with his life, when he is appealed of any capital crime, as *Treason*, *Murder*, or *Robbery*, and hath no other proofe to clear him? And if a man may defend his goods and possessions with his life, when he is either robbed or forcibly disseized, shall he not do the like in an Appeal of *Robbery*, or in a *Writ of Right*, for the same goods and possessions?'—Mr. Davies, also, endeavours to rebut the arguments of the 'canonists.' In truth, though we cannot desire to retain the Trial by Battle as a part of our jurisprudence, very weighty apologies are to be made for it: and it seems, at least, undeniable, that to take it away, is to take away a man's *natural right*. Whoever has made himself acquainted with the atrocious acts, by means of which innocent persons have sometimes been brought to ignominious deaths, must almost find himself compelled to acknowledge, that however much the Trial by Battle is at variance with our present manners, an equal share of substantial justice is to be expected from it, (and from the trials by fire and water) as from trial by witnesses, judges, or juries. See some examples, at the end of an invaluable treatise on the *Theory of Presumptive Proof*. 8vo. 1815.

"† 'Rare are the examples,' says Golden, 'of Battels waged upon criminals, in the annals of the English laws; and, if I forget not, the least plural number doubled, comprehends as many as are therein reported, with ensuing performance.' *Duello*, chapter 8, where reference is made by the Author to 7 Edw. III, fol. 12.; 8 Edw. III. *Itin. North. tit. Judgment*, 225. 19 Hen. VI, fol. 35. The learned Author, however, elsewhere acknowledges, that the paucity of examples may rather be attributable to the want of their preservation, than of their occurrence; and another writer would even persuade us, that in the reign of Henry II, Felonies were rarely tried in any other manner. See *Antiquary Discourses*.

"‡ In Rushworth's account of the Case of *Rea and Ramsey* (see Appendix, below, page 30), the Earl Marshall is made to say, 'That it was an error in many to apprehend, that as soon as an Appeal was brought into this Court, [of Chivalry] it was presently to be decided by Duel, when, as Duelling was the ultimate trial, in defect of all others; and even then it was in the arbitrament of the Court, whether a Duel shall be granted or denied.' But no person will contend that the Court of Chivalry had any other alternative, in Appeals of

questioned the 'lawfulness' of granting a Duel or Battle, they intended to question the lawfulness of *allowing* Appeals of Treason. What were the grounds on which some, even with reference to the law of the land, may possibly have questioned the lawfulness of Appeals of Treason, this is not the place to inquire; but let it be understood, that at Common Law, the crimes which we now call Treasons are ranked with other Felonies; and that with respect to all Felonies, almost the sole mode of trial, upon Appeals, (unless otherwise chosen by and allowed to the Appellee) is Battle; so, that to condemn Battle, is to condemn Appeals.

Mr. Stanley, attorney-general in the year 1774, taking part in the debate already adverted to, very finely said,—“I apprehend, that criminal laws were made to save the lives of persons, and not to destroy them.” Mr. K., in the course of an exposition of the real principles of Appeals, which almost immediately follows our last quotation, affords us a satisfactory commentary on a text, which, to some ears, may sound paradoxical. In reality, criminal laws are made, not only to protect the peaceable from acts of illegal violence, but the innocent from the effects of unjust suspicion and accusation:

“The Editor, in his Argument, already referred to, has endeavoured to trace, by the help of such books and facts as have presented themselves, the history of the *origin* and *continuance* of Appeals. The *origin* he has ascribed to a stage of society prior to the introduction of the principles of public justice; a stage in

Treason, than either to grant the Duel or to deny it.”

“§ Battels personal, gaged betwixt the subjects of one kingdom, in criminal causes, are to be fought before the King himself, or the Constable and Marshall, or the Justices of the King's Bench, at the election of the Appellor. If the Appeal be brought in the High Court of Parliament, or the Military Court of the Constable and Marshall, the manner of fight is as the parties shall accord; either on horseback or on foot, by capitulation, or à toute outrance.

“The lawfulness of these I do not undertake to defend; but I hold some of them most unlawful that are à toute outrance; and yet I hold all Appeals triable in the King's Bench lawful. The Parliament, in the time of King John, and the carriage of other Kings since, concur with me in this difference; for, generally, all statutes concerning Combats do abridge such occasions of trial. For Poggius reporteth, that King Edward III, by devising several blazons of one and the self-same arms, ended a controversy between two Captains, one of Genoa, and the other of France: Alciatus commendeth the fact of the King. But the Parliament in King John's time enlarged Trial by Battle, when they allowed a man convicted of felony, by his own voluntary confession, (?) the Coroner (?) in sanctuary to appeal another.” Mr. Tate's Paper, Feb. 1600. Collectanea Curiosa, vol. i. p. 6.”

which there were no tribunals to take cognizance of wrongs done to individuals; when the common interests of the nation were the only concern of the nation; and when, for every domestic offence, as between countryman and countryman, the sufferer, or his relative, or his friend, was left to the remedy of his own revenge or indemnification. To this there is little to be added. By degrees, however, domestic government grew up; domestic rapine and personal violence became objects of governmental suppression; every instance of either was esteemed a *public* wrong, and the *public* undertook its punishment. In this new state of things, Appeals might seem to have lost all their *reason* and utility; and their *continuance* might be ascribed (as, through too much contentedness with the representations of preceding writers, the Editor, in his Argument, has, perhaps, too exclusively ascribed them) to the prejudices of the people in behalf of ancient rights; rights which it was doubtlessly difficult to induce them to surrender. That *reason* for the *continuance* of Appeals is certainly a true one; but it is not the only one. There is another, to be supported or overthrown upon very different grounds, and the perception of which brings us to the reasoning of the ANTI-DUELLO.

“Human knowledge is finite; and law, which pretends to do universal justice, is continually betrayed into difficulties from the limitation of its means. It takes upon it the work of a god, while it possesses only the powers of a man; and, what is worse, its arm has more strength than its head has understanding, or its eyes perception. That which is to do right in all things, should know all things, should see all things. Law no sooner begins to operate, than it perceives that there are many things which it cannot do, or can do only at the risk of misdoing. While individuals were left to redress, or to revenge, by their own strength, the injuries which had been done to themselves, their kindred, or their friends, they acted as they pleased, and at the risk which they chose to encounter, upon whatever evidence, substantial or otherwise, they might believe, or hold up to view, in pursuing justice, or in gratifying malice. As society had nothing to do with their proceedings, so it could not interfere with their motives. If one man said that he was wronged, and another denied that he had wronged him, society was not concerned in the quarrel; and if the innocent was destroyed through a mistaken notion of guilt, there existed no umpire who was entitled to say, from authority, that this was really the case: the Accused fell; the Accuser survived; and there was the end of the affair. But it was in order to remedy these evils, that men first submitted to the establishment of a public administration of justice. Society interposed, in behalf of the suffering innocent, upon the terms of hearing all complaints of wrong, and of forcing, with its own hand, compensation for civil injuries, and of inflicting the stipulated punishment for

crimes. But nothing human is perfect; and this great improvement in the economy of human life was itself not without serious inconveniences. In the previous state of things, the balance of evil had been heavily against the innocent, unjustly accused, or the venial offender, mercilessly punished. All had been left at the disposal of the fierce and angry passions, the malice and the violence, of those who surpassed in strength and in audacity. In the new state of things, the balance was turned (though certainly less heavily) against the just Accuser. It is true, on the one side, that calumny is more common than crimes; that there are more unjust accusers than guilty persons; but it is equally true, that multitudes of crimes are committed which are yet insusceptible of *proof*. By the terms of the new compact, therefore, the rights of accusers were seriously abridged, and guilt, to a very great extent, was covered with impunity; so, that absolutely, while on the one hand, innocence was protected, on the other, by the inevitable operation of the same system, honest men (as the phrase is) were robbed of their right, and crimes, by the difficulties created in reaching them, were defended and encouraged. The tribunals, whatever was their zeal for justice, could not pursue crimes in the same manner in which they had been pursued by individuals; and this incapacity was founded on two reasons. First, they could not act upon the mere impulse of passion; they could not refuse solemn investigation; they could proceed only upon deliberate conclusions; none of which embarrassments had stood in the way of the private avenger: and, secondly, as the facts were all such as they had no personal acquaintance with, they could come to no conclusion but through the production of *evidence*. It is this production of *evidence* which is the great stumbling-block in the way of human justice. How shall a Court proceed without *evidence*, and yet how many things are there not true, concerning which no *evidence* of their truth can be produced? Here, then, the most just Accuser is baffled, and here, the most guilty criminal is protected; and this is doubtlessly a great evil, and one from which society should relieve itself—if possible. Experience has, by this time, taught us that it is impossible; that we are without a remedy; that the same laws which protect innocence, must unavoidably protect guilt. But is it wonderful if, in the infancy of the social state, or rather in the change from infancy to manhood, this great truth was not perceived, or, if perceived was obstinately resisted? Is it wonderful if an attempt was made at a compromise; or, if the separate evils of the two states of society which have been described, were attempted to be obviated by separate remedies, and if a *mixed* administration of justice was set up, in which society was to have its share, as far as society could properly operate, while individuals, also, were to have their share, as far as society was found to be impotent? Is it wonder

ful that, while the tribunals undertook, on behalf of the public, to hear and determine all public charges of guilt, individuals were left free to prosecute those private accusations, of the truth of which they professed to have personal knowledge, but with respect to which, either as to condemning or absolving the accused, society, for want of public evidence, was still unable to take a part? This private and personal accusation (and no other) is properly and lawfully an Appeal; and thus the Appeal is, as before described, a *supplement* to the public administration of justice, and was *continued* as a remedy for the acknowledged defects of the new system: and, thus, to oppose, as unjust, the principle of attempting to supply these defects; to abandon the project of relieving ourselves from the acknowledged but inevitable evils; to reject every attempt at conviction without evidence;—this is to condemn Appeals, and this is the argument of the Anti-Duello.

“There belongs, however, to what has gone before, some highly important explanations; and, in the first place, a most serious inquiry into the respective laws of *evidence*, as admitted by our ancestors, and as co-existent with the institution of Appeals, and as admitted, even in our Courts, at this day: for, till we distinctly perceive the immense subsisting barriers between the two, we must still submit to believe ourselves no better than wandering in the dark. In reality, the *whole doctrine of presumptive evidence* was scouted (at least in theory) by our ancestors. The Editor, in his Argument,* has conveyed an opinion, that the Trial by Jury has been the immediate successor of, and is even blended with the Trial or Judgment of God, and that opinion he now considers to be incontrovertible. But, to the history of this modern mixed mode of criminal trial, he believes there also belongs a history of the admission of *presumptive proof*, in Trials by Jury. Our ancestors had no notion of pronouncing a human judgment upon things out of human knowledge. All *circumstantial* or *presumptive proof*, they referred to the Judgment or Miracle of God; and all private and personal Accusations, or Appeals, they referred to the same source of decision, unless where Battle was practicable. Trial by Jury, or that which had the place of Trial by Jury, simply considered, stood upon positive proof, by the mouths of witnesses, alone; and it was not till Trial by Jury became, in criminal matters, a compound tribunal, at which ‘God and the country’ were alike presumed to sit, that ‘violent presumptions’ were listened to by Juries. It is known that, upon trials for felonies, by indictment, the accused is denied, by the English law, the assistance of Counsel†, and

* Argument, page 113.”

† Blackstone has lifted his voice against the denial of Counsel to persons accused of felonies; and the Editor conceives that it would be a dereliction of duty to mention that denial without reprobation. Every defence of which it is susceptible belongs only to theory.

that for that denial, this reason (in addition to one more familiar) is assigned by Sir Edward Coke, ‘That the evidence to convict a prisoner ought to be so manifest, that it cannot be *contradicted*’—he should have written, ‘that it cannot be *doubted*.’ Now, this is the sort of *evidence* which alone our ancestors permitted (in theory at least) to influence human judgments, and every thing short of this they left to ‘God,’ or to Battle. In later times, Trials by God and by Battle were sought to be superseded by Trial by Jury, and then a new compromise, succeeding that which has been spoken of before, was tacitly entered into with Accusers, in virtue of which, they were permitted to attempt the proof of guilt by means of *presumptive evidence*. Amid a choice of evils, this course is not to be condemned; but, at the same time, it shews, both the caution with which, agreeably with the practice of our ancestors, such evidence should be received by Juries, and also the progressive doing away that has taken place, of the *reason* for *continuing* Appeals.”

But we must take leave, for the present, at least, of Mr. Kendall’s “Preface,” in which, at last, no more is aimed at, than, while some points of foremost magnitude are partially discussed, to afford a glimpse of all that learning of the subject which still remains behind, and the production of which throws so much light upon our ancient history and manners, and displays so much of the universal history of man*; and open the pages of the ancient part which it precedes, and which is written with all that nervousness and poetic beauty, and strength of argument, accompanied by more or less quaintness of expression, which so often characterize the English works of the age to which it belongs.

Compelled, by our limits, to cut short our remarks for the present, we hasten to redeem our promise of stating the particular measure which Mr. Kendall, in his Argument, and in the publication before us, inclines to believe most advisable. It is, to leave the law of Appeal of Murder, and the law of Trial by Battle, untouched, except by so mending the 3d of Henry VII. as to take away from the “wife or next heir” the right of Appeal, where a trial has been already had at

* We learn from a note, that Mr. K. has it in contemplation to write a larger Work on the subject, to be entitled, “The History, Reason, and Law of Trial by Battle, including an Exposition of the Nature of Appeals of Felony and Writs of Right; as also some Inquiry into the Administration of Civil and Criminal Justice in Europe, during the Middle Ages, and into the Ancient and Modern Notions of Trial by Jury, and of the Theory of Evidence.”

the suit of the Crown*. Mr. C. does not conceal from himself, that there are inconveniences attendant upon leaving the Appeal of Murder in any existence at all; but admits that there are also inconveniences attendant upon its total abolition: meanwhile, the simple amendment which he proposes, would afford a complete remedy to the principal and intolerable grievance of Second Criminal Trials. As to Trial by Battle, that must never be separated from Appeal of Murder, in a greater degree than it is already†.

In fine, before the publication of the next week’s number of the Literary Journal, the sentiments of Parliament will be, to some extent, expressed. We wait for those sentiments with some degree of curiosity, considering what have been the sentiments of previous parliaments on the subject. Mr. K. has observed, in his Argument, the House of Commons, in 1774, was taken by surprize, owing to the incidental manner in which the question was brought before it; but, that in the present instance, ample time and preparation for a more formal decision has been afforded. In 1774, the several speakers certainly knew very little of the matter on which they spoke; and a much wider portion of information is now to be looked for, in any debate which may arise‡. One thing, at least, is particularly desirable, both for the credit of English learning, and for the avoidance of those prejudices, which attach to names. It is, that no member of either house should speak of Trial by Battle, as being of *Norman* origin in England. At least, we warn all that they will do so at their peril; for ample proofs to the contrary are even now before us§.

(To be continued.)

* For a view of the 3d of Henry VII. its origin and consequence, and the state of the Law of Appeals before and after the passing of that statute, see Mr. Kendall’s Argument, p. 14.

† Mr. K. expresses his regret, that want of leisure prevents his entering into a reply to the Quarterly Review, in a number of which, published at the date of the printing of “Anti-Duello,” after coinciding with Mr. K. on the law of Trial by Battle, pleads for the justice of Second Criminal Trials—would have them established by new laws—and would, to this end, turn the Judges into public prosecutors!!!

‡ See the parliamentary report in the present number, before referred to.

§ Blackstone has done much to mislead us as to the true history and character of our Saxon and Norman institutions, respectively, and his words are now constantly repeated, with a school-boy servility. Mr. Tyndal, also, in his address to the Court of King’s Bench, subsequently to the publication of

The History of British India. By James Mill, Esq. in three volumes, 4to. pp. 2145. London. 1817.

(Continued from p. 68.)

THE Carnatic is a large district of country along the coast of Coromandel, extending from near the river Kistna, to the northern branch of the Cavery, which had fallen into dependence upon the great rajahships of Beejaunggur and Warankul, and after the reduction of these Hindu powers, had been united to the Mahomedan kings of Beejapore and Golconda. Upon the annexation of these kingdoms to the Mogul empire, in the reign of Aurungzebe, the Carnatic was included in the general subjugation, and formed part of the great Subah of Deccan, of which it became a nabobship.

The disputes between the Subahdar of Deccan and his deputy, the Nabob of the Carnatic, had proceeded to hostilities in 1740, and which continued with varied success, for some years, when the keen eye of Dupleix saw it, as affording a fine opportunity for extending the possessions of the French; and so well did he succeed in his intrigues, and the military assistance he gave,

Mr. K.'s Argument, seemed to be particularly desirous of denying the Saxon origin of Trial by Battle, therein asserted; and, of course, to feel himself very strong upon the question. Mr. Tyndal said, "I shall call your attention no further to the introduction of this mode of trial into this country, than by stating, that it was brought into this country by the Normans. For, if you look at the Collection of the Saxon Laws, by Barnard, or as they are referred to by Selden, in his learned notes to Eadmerus, you will find that, although, in the fourth volume, Selden's remarks occupy a considerable portion of the Work, there is no mention whatever of the Trial by Battle. The Saxon laws, themselves, are equally silent upon the subject. The Saxon laws being silent with respect to the Trial by Battel, you will turn to the laws of William the Conqueror, which you will find referred to in 4 Selden, p. 1658, and ch. 6. The laws of William the Conqueror are there divided into separate heads. In ch. 63, it is declared, that if a Frenchman appeal an Englishman of perjury, murder, theft, manslaughter, or robbery. *Anglus se defendedit per quod melius voluerit*, &c. (here the learned counsel quoted the original passage, which showed that the party appealed had the right of demanding a Trial by Battle). He preceeded: I introduce this to satisfy you, that the Trial by Battle is of Norman origin. It appearing, that before the Norman conquest, this mode of trial was not known, and that, at the conquest, it was introduced by the Normans, I conclude it is a practice originating in the introduction of the Norman law." *Report*, 8vo. p. 115. Mr. Tyndal, however, was in the wrong, and the very edict of William I. which he quoted, is sufficient, in default of other proof, to convict him of his error.

that he soon presided over the whole region of Deccan.

The efforts of the English had hitherto been too feeble to oppose the rapid progress of French ambition, when Mr. Clive, who had been sent out to India at the age of nineteen, as a writer in the service of the East India Company, and had now become a captain, discovered that daring intrepidity and presence of mind which pointed him out as a man of great promise. "Upon the conclusion of the affair at Devi-cotah, Clive returned to his civil occupation, but no sooner did his countrymen resume the sword, than his own disposition, and the scarcity of officers, again involved him in operations, far better suited to his restless, daring, and contentious mind." He was furnished with two hundred Europeans and three hundred Sepoys, with eight officers, of whom six had never been in action. With this slender force, Captain Clive gained possession of the city of Arcot, and defended it against the repeated attacks of Chunda Saheb, during a siege of fifty days, with an army of three thousand men, and which were afterwards reinforced with two thousand more; and "when the enemy attempted to storm at two breaches, one of fifty and another of ninety feet, he repulsed them with but eighty Europeans and a hundred and twenty Sepoys, fit for duty; so effectually did he avail himself of his feeble resources; and to such a pitch of fortitude had he exalted the spirits of those under his command." The following night the enemy abandoned the town, and Captain Clive, with some trifling reinforcements, pursued and defeated them at Arni, and recovering Conjeveeran, returned to Fort St. David, in December, 1752. Several conflicts between the English and French troops succeeded, in which the most decisive advantages seem to incline to each side, which terminated in the English establishing Mahomed Ali as Nabob of the Carnatic, on condition of receiving one half of all the monies collected from the Zemindars, and other governors of forts and districts, which, however, were not so productive as they had anticipated.

Suraja Dowla succeeded his grandfather, Aliverdi, as Subahdar of Bengal, in 1756; this prince was ignorant and voluptuous, irascible and headstrong; it was, therefore, not to be wondered that he should soon engage in disputes with the English, and he had not held the reigns of government more than two months when he attacked Calcutta, which not being in a condition

to defend itself, it was determined by the English to abandon it in the night; the cowardly impatience of some, in their eagerness to get away, left a number of the English in the fort to the mercy of a barbarous enemy; these, with Mr. Holwell at their head, maintained the defence for some time, and made signals to the ships that had abandoned them to come to their relief, but without success, though "never perhaps was such an opportunity of performing an heroic action so ignominiously neglected; for a single sloop, with fifteen brave men on board, might, in spite of all the efforts of the enemy, have come up, and, anchoring under the fort, have carried away all who suffered in the dungeon." The enemy, at length, entered the fort, and Mr. Holwell and his men were crammed into an unwholesome dungeon, called the Black Hole, where, out of one hundred and forty-six unfortunate individuals that were thrust in, only twenty-three were taken out alive in the morning; some of the company expiring very soon after they were put in, others grew mad, and, having lost their senses, died in a high delirium.

The news of the capture of Calcutta reached Madras on the 15th of July, 1756, at the time that Colonel Clive was on the coast, on his return from England, whither he had gone for the recovery of his health, and had received the appointment of Deputy Governor of Fort St. David. The first object was to re-establish the Company's affairs in Bengal, and Colonel Clive was despatched with five ships, serving as transports, and having on board nine hundred European troops, and fifteen hundred Sepoys; they sailed from Madras on the 16th of October, 1756, arrived in the Ganges on the 20th of December, and took possession of Madras on the 2d of January following: Hoogly, a considerable city about twenty-three miles up the river from Calcutta, was captured eight days afterwards. These events so appalled the Subahdar of Bengal, that he entered into a treaty with Colonel Clive, by which he restored to the company their factories and privileges, with the permission to fortify Calcutta; he also entered into an alliance, offensive and defensive, with the English.

The restless ambition of Suraja Dowla convinced the English that he would soon attempt to regain his authority, and that the only means to counteract it was by extending their own power; some intrigues followed, in which the English were eminently

successful in obtaining ample compensation for the losses by the capture of Calcutta; war with the Subahdar followed, and in a battle at Plassy, the English, under Colonel Clive, with an army of one thousand and fifty Europeans, and about two thousand Sepoys, aided by the defection of Meer Jaffier, uncle of the Subahdar and one of his generals, defeated an army of fifty thousand foot and eighteen thousand horse, and "determined the fate of a great kingdom, and of thirty millions of people, with the loss of twenty Europeans killed and wounded, of sixteen Sepoys killed, and only thirty-six wounded." Suraja Dowla afterwards fell into the hands of Meer Jaffier, and was assassinated. The battle was fought on the 23d of June. On the next day, a meeting was held to confer about the stipulated monies, when the chief officer of finance declared the whole of Suraja Dowla's treasures inadequate to the demand. "The restitution," says Mr. Orme, "with the donations to the squadron, the army, and the committee amounted to twenty-two millions of sicca rupees, equal to £2,750,000; but other donations were promised, which have since been the foundation of several fortunes." The Bengal treasury was, however, not so rich as had been anticipated.

A war with the French succeeded, which terminated in the capture of Pondicherry, and their entire expulsion from the Carnatic, notwithstanding the reinforcements they had received from Europe, and the partial successes gained by the unfortunate Lally*, who, on his return to France, was tried and suffered an ignominious death for the reverses the French had sustained in India.

Meer Jaffier succeeded as Subahdar or Nabob of Bengal, in the attainment of which he promised sums he afterwards felt neither very able nor willing to pay; "in making promises with a view to the attainment of any great and attractive object, an Indian sovereign seldom intends to perform any more than just as much as he may find it unavoidable to perform;" and Meer Jaffier began to hope that some favourable event would relieve him from fulfilling the stipulations into which he had entered.

In 1758, a commission was sent to India for new modelling the government, "a council was nominated, consisting of ten; and instead of one governor, as in preceding arrangements,

* Lally Tolendal, who figured in the French Revolution, is a son of this brave but unfortunate man.—REV.

four were appointed, not to preside collectively, but each during three months in rotation." Colonel Clive, to whom the company were so largely indebted, was not included in the arrangement, but the council, much to their credit, with one accord, invited him to accept the undivided office of President, which he did not hesitate to take; by his activity he dissolved a powerful confederacy of the native princes, formed against Meer Jaffier, from whom he afterwards received the rank of an Omrah of the empire, and a grant amounting to the enormous sum of £30,000 per annum. About this time, the Dutch sent an expedition from Batavia, to reinforce their settlement in Bengal, but they sustained a signal defeat, and were glad to prevent their total expulsion, by paying the expenses of the war; as soon as this was settled, Colonel Clive resigned the presidency in favour of Mr. Vansittart, to return to Europe. The new governor found the treasury of Calcutta empty, and the English troops on the very brink of mutiny and desertion for want of pay; Meer Jaffier was dethroned, and the administration placed in the hands of his son-in-law, Meer Causim, who hastened to fulfil his engagements with the company, which he effected by the 22nd of March, 1762; he had also reduced to obedience all the rebellious Zemindars. The disputes of the company's servants with Meer Causim, relative to the private trade, caused much uneasiness to the governor, and after some ineffectual attempts to settle them amicably, a war ensued, in which the Nabob was dethroned and Meer Jaffier restored; the capital of Meer Causim was taken, who, in a paroxysm of rage, had massacred his English prisoners. Meer Jaffier died in 1765, and, in the treaty with the new Nabob, it was determined by the English to take the military defence of the country entirely into their own hands, and to form an arrangement with the civil government, which should place the country so completely in their hands, as to enable them to defend themselves against the power of the Nabob.

Although Colonel Clive had quitted India with an act of insult towards his employers, which they highly resented, yet so sensible were they of his talents, and the important services he had rendered them, that it was determined to send him back to India with the "powers of Commander-in-Chief, President and Governor in Bengal, and, together with four gentlemen, named by the directors, was to form a select committee, empowered to act by

their own authority, as often as they deemed it expedient, without consulting the council, or being subject to its control."

Lord Clive, for such was now his rank, arrived at Madras on the 10th of April, 1765, and soon commenced those bold and splendid measures which form so important an epoch in the history of India; a private letter to Mr. Rous, dated seven days after his arrival, has the following passages:—

"We have at last arrived at that critical period, *which I have long foreseen*; I mean that period which renders it necessary for us to determine, whether we can or shall take the whole to ourselves. Jaffier Ally Khan is dead, and his natural son is a minor; but I know not whether he is yet declared successor. Surajah Dowla is beat from his dominion; we are in possession of it, and it is scarcely hyperbole to say, to-morrow the whole Mogul empire is in our power. The inhabitants of the country, we know, by long experience, have no attachment to any obligation. Their forces are neither disciplined, commanded, nor paid, as our's are. Can it then be doubted that a large army of Europeans, will effectually preserve us sovereigns; not only holding in awe the attempts of any country prince, but by rendering us so truly formidable, that no French, Dutch, or other enemy, will presume to molest us?

"The very Nabobs whom we might support would be either covetous of our possessions, or jealous of our power. Ambition, fear, avarice, would be daily watching to destroy us; a victory would be but a temporary relief to us; for the dethroning of the first Nabob would be followed by setting up another, who, from the same principles, would, when his treasure admitted of his keeping up an army, pursue the very path of his predecessor."—Vol. ii, p. 222.

Such were the views of Lord Clive, and such the policy which the experience of a century and a half had convinced the British was necessary to secure those commercial advantages which lay before them, or even to preserve a footing in India; a system of policy they had been so slow to adopt, although the Portuguese, Dutch, and French, had always attempted it. The final overthrow of the latter, in the Carnatic, had placed it under the government of a chief, who owed his elevation to the English, and was dependent upon them, and the treaty of Paris, in 1763, defined the rights of the two nations in India, and restored to France the different factories she had possessed at the beginning of the year 1749, on condition of her not erecting fortifications or maintaining troops within the dominions of the Subahdar of Bengal.

The affairs of the company were in a very critical and almost desperate si-

tuation when Lord Clive returned to India, and he found it necessary to assume greater power than had been invested in him, and to adopt the most decisive measures not only with the native powers, but also with the company's servants, whose corrupt abuse of the private trade had long been a subject of complaint at home. Lord Clive made a progress up the country, formed new treaties with the Nabob and the Emperor, and having established the affairs of the English on a more satisfactory footing, once more returned to Europe, to receive anew the reward of his active exertions.

(To be continued.)

QUACK MEDICINES.

To the Editor of the Literary Journal.

SIR,—Your correspondent, T. R., in a former Number of your valuable Journal, has a most excellent cause, but there is one very essential requisite often required to make even the best successful, namely, a good advocate.

If T. R. be a member of the medical profession (which the public will very naturally suppose) before attempting to censure the incompetency of others, he should, himself, avoid the disclosure of any incompetency in his own person. I would only beg leave to ask him what is the difference between "temperament and constitution, or habit of body and constitution." But notwithstanding either this real or apparent ignorance, which I only name in defence of a profession perhaps more justly to be esteemed learned than any other, he has my particular thanks, and also deserves the gratitude of the public, for moving a subject to them of the most vital importance; and so perfectly am I of his opinion, that I think the suppression of Quackery would be even more beneficial to the community than all the charitable establishments for medical purposes at present in the country.

Quack medicines prove destructive in two ways; first, by their indiscriminate use if they are active, and next, if even harmless in themselves, by deluding the unhappy patient, while taking them, into a fatal confidence in their efficacy; his life is thereby frequently sacrificed, the time taken up in their use losing the proper period for the use of real remedies.

Were it the business of the legislature to attend to the lives as much as to the purses of his Majesty's liege subjects, they would long ere now have perceived the evil and found the means of removing it, as with their concurrence, nothing could be more easy. It would only be necessary to pass an act of Parliament obliging all persons, proprietors of such remedies, or pretended remedies, to submit them to the experiment of the College of Physicians; and for all such, as in the opinion of the College, have any value, a just remuneration should be voted

to the discloser, and the remedy so disclosed transferred immediately to the use of the whole profession for the benefit of mankind. This would strike at once at the very root of the mischief, and Parliament need not be very apprehensive of putting the country to much expense by the experiment, for I may safely venture to say, that hardly in a single instance would it be found, when the composition of the whole of these nostrums was disclosed, that they were not superseded by remedies at least equally efficacious (but most probably much more so) in the constant use of every regular practitioner, with the added advantages of not being ignorantly and indiscriminately employed, but as the peculiar circumstances of each individual case may require; and in this assertion I am completely borne out by what has followed every disclosure of the composition of Quack medicines heretofore. What has been the fate of James's Powder, the most celebrated of them all; that which the learned fellows of the College themselves were even proud to prescribe? Now the secret is disclosed, we perceive that the profession was in the constant habit of using, during the whole period of its fame, more efficacious remedies of the same class, and that it is not even equal to the antimonial cup, so celebrated two centuries ago by all the old women of the day.

Than such an act, therefore, nothing can be more just and equitable, for if they possess any value, their discoverers will be rewarded; if they possess none, the vendors are certainly guilty of a criminal act against the public, and it is but common humanity, independent of justice, that the public should have the fullest and speediest benefit of all such discoveries; if they should ground a plea upon their patents, (patents, perhaps, for the worst kind of swindling, or even for the commission of murder) and that plea be admitted in law, at least for the honour of science, the good of mankind, and to save the further disgrace of the government, let the race end with the present patentees.

The artifices, baseness, and wickedness of Quackery being thus disclosed, it only remains to find government a means of supplying the defalcation that must arise to the revenue upon their suppression? (a matter of no small consequence in the present state of the country). This again may be done in the most easy way possible, by the imposition of a small stamp duty upon every article from the shop of the apothecary, for which, the benefit the latter, as well as the public, would derive, from the removal of these pests to society, would prove an ample compensation.

In the present enlightened state of society, it is certainly surprising that the legislature themselves have not, before now, seen the evil and removed it, but it is still more so that the medical profession have not before taken steps to open the minds of the legislature upon the subject; and the public, after these plain facts, will be apt to say what is the College

of Physicians about, that such glaring evils should exist without a remedy? but their surprise will cease, when they are informed, that whatever may have been their practice originally, there is hardly an instance, of late years, of any proceeding for the public advantage originating in any chartered body connected with the medical profession in their corporate capacity, with the exception of the prevention of unqualified persons from practising, who appear before them for examination. Their conductors seem chiefly taken up with pocketing their paltry gains, and occasionally playing the little tyrants in their petty republics; even their interference paralysed the best feature in the Act lately passed for the regulation of the practice of apothecaries. —The Apothecaries' Company appear certainly to have acted honestly in the supply they have afforded the public of genuine medicines; but the distribution of drugs has become so general, that the advantages derived thereby to the public are very limited; and this is another evil that loudly calls for the interference of the legislature.

But to return to my subject. What is to be done with those quacks who proffer their advice and personal attendance to the public, is a more difficult consideration: but this evil will be gradually diminished, it is presumed, by the operation of the late act for preventing the admission of improper persons into the profession. The community will have the satisfaction, when the present race disappear, to know, that if there is not honesty in such base practitioners, at least there must be some ability, the very reverse of which is the case at present; and it is to be hoped, that very few who have qualifications to practice their profession honourably, will, in future, disgrace themselves with their brethren, and the discerning part of the public, for the sake of filthy gain so unworthily acquired.

M.

MR. ALDERMAN WOOD.

To the Editor of the Literary Journal.

SIR,—Observing in the last number of your paper, an article signed "Quiz," which purports to relate an anecdote of an "Alderman W—," during his late visit to Paris, I beg leave to inform you, that, if it refers to me, there is not the slightest particle of truth in this very facetious story. Did the person, from whom you received it, know my present habits, he would be convinced, that I was as unwilling to obtrude my "civic honours" before the Parisian public, as I am to trouble you, in your public capacity as an editor of a Journal. You will, however, I doubt not, after this explanation, agree with me that, in reviving an "old joke," its excellence would have lost nothing, had it been truly applied to the person who is entitled to all the merit of it.

I am, Sir,

Your obedient humble servant,
77, South Audley Street, M. Wood.
January 29, 1819.

BURLINGTON SCHOOL.

To the Editor of the Literary Journal.

SIR,—Pray speak a word in favour of the poor little beggars we meet with in every street, that they may be provided with muffs and ruffs and tippets, and the other less material necessities of life, such as meat and drink. There are some persons who have, at times, an overweening touch of humanity, of whom, your tender-hearted correspondent, Harriet, is an instance. What folly! Children, who are provided with every requisite, as those are at Burlington School and other charities, must perish, forsooth, from the want of a pair of gloves. This attack upon the governors, in the present mild winter, is peculiarly interesting. Luxury in all states has been the forerunner and the cause of their downfall. Our luxurious habits, at the present moment, are the causes of three-fourths of the diseases with which we are afflicted; and now these children of the nation, who should hereafter be the supporters of the state, are to be enervated by the efforts of mistaken tenderness. Let us hear no more of this nonsensical whining.

A FRIEND TO HUMANITY
JUDICIOUSLY EXERTED *.

A CHILD,

(From "Micro-cosmographic; or a Piece of the World Discovered; in essays and characters, BY JOHN EARLES, BISHOP OF SALISBURY, The fifth edition much enlarged." London, 1629.)

A CHILD is a man in a small letter, yet the best copie of Adam, before he tasted of Eve, or the apple; and hee is happy whose small practice in the world can onely write his character. Hee is nature's fresh picture newly drawne in oyle, which time and much handling dimmes and defaces. His soule is yet a white paper, unscribbled with observations of the world, where-with, at length, it becomes a blurred note-booke. He is purely happy, because he knowes no evill, nor hath made meanes by sinne, to be acquainted with misery. He arrives not at the mischief of being wise, nor endures evils to come by foreseeing them. He kisses and loves all, and when the smart of the rod is past, smiles on its bearer. Nature and his parents alike dandle him, and tice him on with a bait of sugar, to a draught of wormewood. He playes, yet, like a young prentice, the first day, and is not come to his taske of melancholly. All the language he speakes yet, is teares, and they serve him well enoughe to expresse his necessity. His hardest labour is his tongue, as if he were loth to use so deceitfull an

* As we commonly wish that all our Correspondents should be heard, we have not omitted to insert the above; but no controversy, we apprehend, was ever less called for. Let the present "Friend to Humanity" look at the brute creation, and at the savage nations, and then deny, if he thinks it convenient, that Nature demands the use of warm habiliments for the "naked, forked animal," called "man."—ED.

organ; and he is best company with it, when hee can but prattle. Wee laugh at his foolish sports, but his game is our earnest; and his drummer's rattles and hobby-horses, but the emblems and mocking of men's businesse. His father hath writ him as his own little story, wherein he reade those days of his life, that he cannot remember; and sighes to see what innocence he has outlived. The elder he grows, he is a staire lower from God; and, like his first father, much worse in his breeches. He is the Christian's example, and the old man's relapse; the one imitates his purenesse, and the other falls into his simplicitie. Could he put off his body with his little coate, he had got eternity without a burden, and exchanged but one Heaven for another.

A YOUNG MAN,

(From the same.)

HEE is now out of nature's protection, though not yet able to guide himselfe; but left loose to the world, and fortune, from which the weaknesse of his childhood preserved him, and now his strength exposes him. Hee is indeed, just of age to bee miserable, yet in his own conceit, first begins to be happy; and hee is happier in this imagination, and his misery not felt is lesse. He sees yet but the outside of the world and men, and conceives them according to their appearing glister, and out of this ignorance believes them. Hee pursues all vanities for happinesse, and enjoys them best in this fancy. His reason serves not to curbe, but understand his appetite, and prosecute the motion thereof, with a more eager earnestness. Himselfe is his own temptation, and needs not Satan; and the world will come hereafter. Hee leaves repentance for gray hayres, and performs it in being covetous. Hee is mingled with the vices of the age, as the fashion and costome, with which hee longs to bee acquainted, and sinnes to better his understanding. He conceives his youth as the season of his lust, and the houre wherein he ought to be bad; and, because he would not lose his time, spends it. Hee distastes religion as a sad thing, and is six yeeres elder for a thought of Heaven. He scornes and feares, and yet hopes for old age, but dare not imagine it with wrinkles. He loves, and hates with the same inflammation; and when the heat is over, is coole alike to friends and enemies. His friendship is seldom so stedfast, but that lust, drinke, or anger may overturne it. He offers you his blood to day in kindnesse, and is readie to take yours to-morrow. He does seldom any thing which he wishes not to doe againe, and is onely wise after a misfortune. He suffers much for his knowledge; and a great deale of folly it makes him a wise man. He is free from many vices, by being not grown to the performance, and is onely more vertuous out of weaknesse. Every action is his danger, and every man his ambush. Hee is a shippe without pilot or tackling, and only good fortune

may steere him. If hee 'scape this age, hee has scapt a tempest, and may live to be a man.

LETTERS FROM NORTH WALES.

LETTER VIII.

Dolgelly.

DEAR W.—During my visit with Mr. E—, I had no idea that I was in the vicinity of a river so celebrated for its sanctity as the Dee; but it appears that I was actually at the fountain-head; for it derives its source from Bala Pool*. The Welsh, in "days of yore," paid a wonderful degree of respect to this "Prince of Cambrian Rivers," on account of the miraculous manner in which it overflowed its banks, without the usual aid of rain. Drayton, in the tenth song of his Polyolbion, thus alludes to this circumstance:—

— "Again Dee's holiness began,
By his contracted front and sterner waves, to show
That he had things to speak that profit them to know.—
A book that was supposed much business to have seen,
Which had an ancient bound 'twixt Wales and England been,
And noted was by both to be an ominous flood,
That changing of his fords, the future ill or good
Of either country told; of either's war or peace;
The sickness or the health; the derth or the increase."

Pennant supposes its name to be derived from duw, (divine,) on account of its miraculous attributes; and not, as is sometimes imagined, from ddu†, (black,) or dwy, (two,) for its waters are by no means dark; nor does it appear to flow from any two particular fountains. On leaving Bala Pool, it pursues its course in a north-east direction, towards Corwen and Llangollen, and, dividing the counties of Denbigh and Cheshire, empties itself into the sea, a few miles beyond Holywell. Giraldus Cambrensis very gravely informs us, that this river runs through Bala Lake, and is discharged at the bridge near the town, without their waters becoming mixed. This was the popular opinion in his day; and, in almost every instance, he very readily adopted such marvellous stories as the inhabitants chose to impose upon him. This belief, however, seems to exist, in some degree, at the present enlightened period; for the neighbouring peasants believe that the

* The Lake mentioned in my last, so called by the natives.

† Spenser, describing the dwelling of old Timon, King Arthur's foster-father, considers the colour of the Dee very different from black:—

"Lowe in a valley greene,
Under the foot of Rawran, mossie o'er,
From whence the river Dee, as silver cleare,
His tumbling billows rolls with gentle roar."
Faerie Queene, bk. 1st. canto 9th.

Gwyniads*, which are very numerous in the lake, are never to be caught in the river; nor the salmon, with which the river abounds, in the lake. The Honourable Daines Barrington, however, who inquired very particularly respecting the probability of this circumstance, says, that he has seen a salmon caught in the lake, at some distance from the bridge; and that he has been authentically informed of several gwyniads having been caught in the Dee, eight miles from Bala. Mr. E. having recommended me to return to Dolgelly, *via* Mallwyd and Dinas Mwdwy, (thereby making a *circumbendibus* of some miles round the country,) I left Bala in company with a gentleman of the name of J. whom I found a very pleasant and intelligent companion. Fifteen miles from Bala, in the vale of Glyn-dwr-dwy, Mr. J. pointed out to me a moat, where, he informed me, once stood the mansion of the celebrated Owen Glyndwr. The moat is square, and nearly a quarter of an acre in extent; there is a small well in the centre, where the house was situated. Here lived Owen, three centuries ago, in all the splendour of a feudal baron, till urged to rebellion by ill-treatment. His first incitement to arms was occasioned by the following circumstance: Lord Gray, of Ruthin, (whose lordship was contiguous to Owen's,) wishing to confine him within the bounds of the Dee, claimed the hills on his side of the river. This unjust seizure produced a suit in which Owen was victorious: but, on the accession of Henry IV to the crown, Gray, relying on the favour of his master, again seized the hills which had been legally awarded to Owen; and, when Owen laid his case before Parliament, he obtained no redress, nor was his petition noticed. This insult was aggravated by an injury of far greater consequence. When Henry went on his expedition against the Scots, Owen was to have accompanied him with his vassals. The writ of summons for this purpose was intrusted to Lord Gray, who designedly withheld it till the time was elapsed, and it became impossible for Owen to obey. Gray represented his absence as an act of wilful disobedience, and by this treacherous transaction obtained a grant of all Owen's land. This was not to be endured by the cholerick chieftain, and a short time from this period saw Owen Glyndwr, with a trusty band of Britons, spreading fire and sword through the territory of the tyrannic Gray. He soon recovered the lands he had been so unjustly deprived of; and, directing his arms to a nobler cause, the freedom of his country, involved England and Wales in a war, which lasted some years, sacrificed many thousand lives, and drenched both nations in blood. Although his motives were not entirely devoid of ambition, we cannot but admire the heroism of the individual who dared to attempt the delivery of his country,

* A gregarious fish; the *salmo lavaretus* of Linnaeus.

after it had been so long under the domination of the English. For a few years Glyndwr was successful; but, after a variety of vicissitudes, after having borne the sceptre of North Wales*, he was compelled to assume the disguise of a shepherd, to preserve his life from the fury of his enemies:—

“Clothed in a shepherd's humble guise,
He gained by toil his scanty bread;
He who had Cambria's sceptre borne,
And her brave sons to glory led!”

In this manner he wandered about the country, till he died at Mornington, in Herefordshire, where he was buried. He was the last person in the principality who attempted to throw off the English yoke; and his memory is still highly revered in the neighbourhood of Glyn-dwr-dwy, which is of itself celebrated as having been the scene of his great exploits and hospitality†. Ten miles from Corwen, we reached Llangollen, where we remained for the day, that we might have an opportunity of viewing its enchanting vale, and some ancient ruins in the neighbourhood. After dinner we walked to Llangollen Vale. The elegant description of the valley in the kingdom of Amhara, by Dr. Johnson, is peculiarly applicable to this vale, for all the blessings of nature seem here to be collected, and its evils extracted and excluded. “Without a sigh of regret, with feelings far different from those of the discontented Rasselas, I could here pass the remainder of my days,” in full conviction that *this* vale contains within its reach all that art or nature can bestow: “I could pity those whom fate has excluded from this seat of tranquillity, as the sport of chance and the slaves of misery!” This delightful vale has been the subject of much admiration, both in prose and verse, and highly deserves the praises that have been lavished upon it: the prospect from the Oswestry road is remarkably fine. The rapid stream of the Dee is seen winding betwixt deep and wooded banks; and the

* He claimed the throne of North Wales in right of his Mother Elena, who was lineally descended from the royal house of Wales. The family name of this extraordinary character was Vychan, or Vaughan; he is styled Glyndwr, from his patrimony of Glyndwr-dwy; or, the Vale of the Dee.

† The Salusbury family has in its possession a dagger, knife, and fork, which Owen usually carried: they are all in the same sheath, but each in a separate compartment, richly ornamented with silver. The knife and fork are rather slender, and the dagger is about seventeen inches long, twelve of which constitute the blade, which tapers to a point. At the end of the handle is his coat of arms, a lion rampant, and three fleurs-de-lys, curiously engraved. The principal part of the handle is inlaid with black and yellow wood, and hooped with silver; the hilt is a solid piece of the same metal curiously wrought, but not much larger in circumference than a crown-piece. The knife and fork are obliged to be sheathed first, when the hilt covers them; consequently, the dagger must be drawn first.

boundaries of the vale,—noble mountains finely varied in shape and tints, add greatly to the landscape. To decorate the scene, an elegant mansion, (I believe, Trevor Hall,) is seen on an eminence on one side, embosomed in woods; and, to complete it, the ruins of Castell Dinas Bran, on the summit of a very steep mountain, seem to command the entrance of the valley.

I shall defer a relation of the continuation of our ramble till my next, when I will give you the history of the above-mentioned castle, and likewise of an adjacent abbey, once of great note.

Adieu! your's, &c.

ON APPEAL OF MURDER.

Conversation in the House of Commons, April 29, 1774, on the Law of Appeal of Murder.

THE House went into a Committee on the Bill for the Administration of Justice in Massachusetts's Bay.

Mr. Moreton desired to know, if the Appeal for Murder did actually exist now in the Colonies?

Governor Johnstone desired to know, if it was to extend to the trial of those sent to England?

Mr. Wallace answered to them both, by saying, he meant it should extend, in both cases, as far as the Bill purported. This brought on a debate concerning the Appeal for Murder being to be taken away in general.

Mr. Dunning. “Sir, I rise to support that great pillar of the Constitution, the Appeal for Murder; and I am not satisfied that a precedent should be instituted, in order to operate as an example for the taking it away in Great Britain as well as the Colonies. This clause considers it now as an existing law in America; I cannot say that I look upon it in that light; but this is not the first time this question has been agitated in this House, and has been called and treated as a remnant of barbarism and gothicism. The whole of our Constitution, for aught I know, is Gothic. Is it, then, the present idea, to destroy every part of that Gothic Constitution, and adopt a Macaroni one in its stead? If so, it is a system of Ministerial despotism that is adopted here: when a political purpose is in view, things may be adopted that may tend to operate as a precedent, that may become at last prejudicial to the public welfare. I wish, Sir, that, in every step of this matter, Gentlemen would be a little more cautious, as I much fear the system would soon be adopted in England: it is a proposition produced on a sudden; and, as, in its extent, it may turn out dangerous, I shall dissent from it.

Mr. Solicitor-General Wedderburn. “I confess, Sir, that this part of our Constitution has never appeared to me as essential: it is very much of a footing with a Trial by Ordeal. Till laws and society

took place, there was no other method of deciding between right and wrong. *There is now no law in being to prevent Trial by Battle*; and not in very ancient times was it, that the Court of Common Pleas attended in Tothill-fields, to judge of the trials. None but the wife of the deceased, as a female, can appeal, and this may be compromised by a sum of money; it may be reduced into a civil suit; but by being adopted in the manner proposed in this clause, it can operate to no bad purpose; nor do I conceive that the liberty of this country will be at all in danger, as it is only a temporary expedient."

Mr. Edmund Burke. "I do not contravert, in an adverse line, what is advanced by the Learned Gentleman. There is nothing more true, than that man has given up his share of the natural right of defence into that of the state, in order to be protected by it. But this is part of the whole law, which you ought not to separate, or else you will soon lay the axe to the root of it in England. If there is an Appeal for Rape and Robbery, you ought to have one for Murder. I allow, that Combat was part of this Appeal; but it was superstition and barbarism to the last degree. I cannot, in any degree, consent that the Common Law should, in any case, be taken away from one part of His Majesty's subjects, and not from the other. But, as this is a question of great magnitude, whenever it comes on, with respect to Great Britain, I hope, then, humbly to offer my opinion on it."

Mr. W. Burke. "No man has the least doubt but the Learned Gentleman (Mr. Wallace) is fully acquainted with every part of the law, ancient as well as modern; but I think, Sir, he should have brought you in a Bill, to have repealed the law in England first; but when this great question comes on, I shall readily give my opinion on it."

Mr. Stanley entered deeply into the policy of our Constitution, and dwelt a long time on the repeal of the law respecting Appeals in general. "*I think it is hard,*" said he, "*that a man should be tried twice for the same offence, AND WHEN YOU HAVE AN ADVANTAGE, BY KNOWING HIS SECRETS AND DEFENCE. I apprehend that criminal laws were made to save the lives of persons, and not to destroy them; that the power of grace or pardon is certainly constitutional, and is a very valuable and glorious prerogative in the Crown: AND A TRIAL IS NOT COMPLETE WITHOUT IT. There never was an instance wherein the trial by Appeal was instituted, that it was not for the sake of obtaining a sum of money; and it is part of the law, that it may be reduced into such compensation, the whole being allowed to be a civil suit: but taking it in its utmost sense, it is nothing but barbarism and cruelty; and I wish to abolish it, as an improper part of that code of law for which we are so much famed.*"

Mr. T. Townshend. "This is a question, Sir, which has frequently been before the House, and has as often been

rejected. I cannot agree to the repeal in part, unless I hear reasons given for the abolition of the whole; or at least better arguments than those I have heard, to induce me to give my opinion, to abolish that part which relates to America."

Mr. Cornwall. "The Appeal for Murder, Sir, is incorporated in the laws of England, either as a natural or a political right. Is, then, Sir, the redress of a particular injury to be remedied only by a sacrifice of the lives of others? Every body knows that manslaughter is a bar to Appeal. *But, Sir, can it be intended, as a wise political institution, that after a Trial by Jury, a single individual, to satisfy his revenge, may overturn the solemn judgment and verdict of a Jury?* It appears to me, upon examination, to be neither a political nor a natural right, and I should be sorry to give my negative to the clause."

Mr. Moreton. "I think the provisions of the Bill right, but I did not apprehend that the question would have been debated in this manner; nor did I think that such an extent would have been in view, so that an example in future might have been brought of this, to attack one of the greatest pillars in this Constitution, the Appeal for Murder. If the prisoner is to be sent here, where is the use of taking the Appeal away in America? I only wanted that you should not give a constitution of Appeal for Murder to the Colonies, when, in my own mind, I am convinced they have it not, nor is it a part of their law; and, as I think that they have no such power of Appeal, I cannot vote for this clause."

Captain Phipps. "I would wish to give to every man in America the same kind of right that we enjoy ourselves. Did they not carry with them all the privileges, laws, and liberties of the country? If they have a right to part of those laws, they have a right to the whole. I think the Appeal for Murder ought to be sacred in this country; and whatever doctrines gentlemen may imbibe from Mr. Blackstone, I cannot conceive them to be of that authority which ought to guide and direct us. There is not a more insidious way of gaining proselytes to his opinions, than that dangerous pomp of quotations which he has practised; it conveys some of the most lurking doctrines to lead astray the minds of young men. To talk of the finger of nature pointing out law, is to me an absurdity; but I would not advise gentlemen to seek for law in the channels of those tomes. The rust of antiquity dims the sight of his readers; but if a man will open his eyes, he will find, that the finger of nature will never point out the principle of law. The great argument which I dwell upon is, that the Appeal for Murder is the law of the land: I am also for preserving mercy in the Crown; I think it the brightest jewel in it: but I think that it is a blight that will destroy all our harvest, if it is without controul. I cannot, Sir, give my consent to this part of the law being annihilated."

Mr. Skynner. "We are got now upon the most important question that can come on. I think the clause does not want advocates, and therefore it might be improper for me to give my opinion; but, Sir, it is no unnatural thing, that the death of a relation should be attempted to be redressed, and that the friends of the deceased should seek for justice. The Appeal for Murder, Sir, is considered as a civil action, and to go on, hand in hand, with the criminal prosecution; and surely, Sir, there is nothing, then, so exceedingly savage or barbarous in it, if it may be compensated by a civil action. But let us consider how this will operate in the Colonies; let us consider in what manner this action can be brought? The Americans cannot make use of it, unless their constitution allows it: a writ must first issue out of the Court of Chancery; but as they have no such court in that country, it cannot take its rise there. A writ of this kind can only issue when the person is in the actual custody of the marshal. In the process which you have laid down in the Bill before us, bail is allowed to be taken for the offence; so that he never can be actually in the custody of the marshal. Therefore, at present, as their constitution stands, I look upon the writ of an execution of Appeal to be impossible there. The Americans will think that we are breaking into their civil rights? and I think it highly improper to introduce the Appeal for Murder in this instance, as it is not necessary. But, Sir, I cannot sit down without saying a few words in defence of that able person alluded to, now a great magistrate, who has thought there is something in our Constitution worth preserving. And sorry I am to hear that great and able writer has received any reproach or admonition in this senate; and I believe the Hon. Gentleman (Captain Phipps) is singular in his opinion upon this head; and I am glad to find there are no strangers in the gallery, for his own sake, to hear what he said*. But, Sir, I am of a different opinion from that Hon. Gentleman, and I dare say the House will agree with me, when I think that book one of the best that ever was written upon the laws of this constitution, and will do more honour to himself and this country than any that ever yet appeared; and I am sorry to hear him reproached, even by an individual, when I am sure the greatest honour will redound to this country from that able performance."

Sir Richard Sutton. "Sir, I do not think that the Appeal for Murder ought to be partially taken away; if you take it away from any part of the dominions, you should take it from the whole. I am much against the measure, because I think it vindictive and cruel."

Mr. Charles James Fox. "I AM FOR TAKING AWAY THE APPEAL FOR MURDER ENTIRELY; BUT I AM NOT FOR TAKING IT

* The standing order for the exclusion of strangers was strictly enforced during the progress of the three Bills relating to the disturbances in the American Colonies.

AWAY IN PART. *If the Appeal is allowed, you take away the power of pardoning in the Crown. I look upon the power of pardon as much a right in the subject to claim, as part of the trial. Suppose a criminal should be tried and convicted, and he should appear to be out of his senses? In this case, he is certainly not to be hanged, the pardon being the only mode of saving his life.* Appeal for Murder is the only instance in our laws, in which satisfaction is allowed to the injured by the blood of another, as it may be compensated by a sum of money. I shall vote against this clause, because I think the Americans have a right to the same laws as we have."

Captain Phipps rose to explain himself, with regard to Mr. Blackstone, and said, however he might have represented his performance, he was glad to find it was so well defended by the warmth of friendship: that he had heard, and was sorry to hear, that book had undergone some regulations with regard to its eligibility, which he hoped was not true. He sat down rather chagrined to find his opinion with regard to that work was singular.

Sir George Saville. "Sir, the *appetite of revenge is, like that of hunger, never to be satisfied.* There are certain rights which we bring into society, which we give up for the good of the whole: the passion of revenge seems to be under that description; and, in this instance only, the blood of another may be compensated by civil action. *But I will not contend that to be a civil suit which ends in hanging, which the Appeal of Murder does, when not compensated for.* But it is necessary that men should give up certain rights which they enjoy, for the good of society at large. I would wish a fair and impartial trial to be secured, which I think is already done in the Colonies, without meddling with the Appeal for Murder."

Mr. Skynner. "Sir, I only rise to explain, that the Appeal for Murder may be reduced to a civil action; that there also lies an Appeal in Robbery and Rape; and if the woman who had been injured, when the man was under the gallows to be hanged, should marry him, he would, by the ancient law, be saved, because all her civil right would be vested in her husband by that act, and therefore compensated for as such: by that act she vests those civil rights, which he had deprived her of, in him, as her husband."

Mr. Wallace withdrew the clause for the [abolition of the] Appeal for Murder [in the American Colonies].

Mr. R. Fuller. "Sir, I am the more convinced by what I have heard to-day, that the whole law relative to the Appeal for Murder ought to be Repealed. I will therefore give notice, on some future day, when I shall make the motion*."

* An Argument for Construing largely the Right of an Appellee of Murder, to insist on Trial by Battle, &c. By E. A. Kendall, Esq. F. A. S. Printed for Baldwin, Cradock, and Joy, Paternoster-row. 8vo. 7s. 6d.—Third Edition. Appendix, p. 309.

LECTURES AT THE ROYAL ACADEMY.

I. PROFESSOR TURNER'S LECTURES ON PERSPECTIVE.

PROFESSOR TURNER has concluded a very instructive course of Lectures on Perspective. In his introductory discourse, he took occasion to observe, that perspective, of itself, had little to attract the attention of the student. He supposed, that not being dressed in a gay attire was the reason so little attention was in general paid to it. It was usually called a dry and intricate study, but in fact, it was the means of attaining the highest excellence, not only so, but that no one could acquire a very tolerable degree of proficiency without its aid. By it we obtained the true form and proportion of every object; and, as form is the language of the art, it must be evident that the knowledge of perspective is what makes that language intelligible. He spoke of the effects of perspective in buildings, and the necessity of understanding its principles, to be enabled to counteract those effects; as, for instance, on the steeple of Bloomsbury church, the spaces between the projections, which appear like steps, increase as they advance to the top, by which, consequence is given. If they had been of equal size, the effect of their perspective appearance would have been such, that they would have become lost in each other before they approached the top; by which the dignity of the steeple would have been sacrificed. This remark was illustrated by drawings of the steeple, of the Golden Pill on the College of Physicians, of the ball of the Monument, and of the grasshopper, on the Royal Exchange, all which are made large in proportion to their height. The remaining lectures were occupied by explanations of various diagrams in geometry, trigonometry, and perspective. The powers which Mr. Turner usually brings to bear, on whatever subject he enters upon, are an honour to the present day. In the branch of art which he pursues, he is equalled by none, and not to be surpassed even by the old masters. If we might be permitted to make one remark, it would be, that in his lectures, he appears to address to men equally well informed as himself, instead of to the students in art; in consequence of which, they are unintelligible to three-fourths of his audience. This gives rise to remarks from narrow minds, who forget that obscurity most often arises from the want of previous knowledge in the listener. If Mr. Turner would condescend to simplify his lectures, and reduce them so as to suit the capacities of his hearers,—the students, to whom they are supposed to be addressed—he would add to their value, inasmuch as they would be more generally beneficial.

II. PROFESSOR FUSELI'S LECTURES ON PAINTING.

Professor Fuseli has commenced giving his usual high intellectual treat at the Royal Academy. In his first lecture, he gave the history of the arts of Italy from their revival; beginning with Cimabue, and tracing their course through the various schools—the Florentine, Roman, Bolognese, and Venetian. His discourses are, as usual, distinguished for their intellectual vigour. For elegance of diction, boldness of conception, sound criticism, perspicuous arrangement, splendid metaphor, and grandeur of style, he surpasses every writer of the present day. Speaking of Michael Angelo, he observed, that a beggar rose from his hand the patriarch of poverty; the hump of his dwarf is impressed with dignity; his women are moulds for generation; his infants teem of the man; his men are a race of giants. Previous to the first lecture, he addressed the students on the subject of their studies; and, among other excellent remarks, he cautioned them against following bad examples; stating, that there was something more to be done in art, than an ostentatious display of a mechanical dexterity in handling the chalk, or in seeking elevation by heading a cabal.

PUBLIC-HOUSE LICENSING SYSTEM.

[The following is from the pen of J. T. BARBER BEAUMONT, Esq. a Middlesex Magistrate, and has peculiar claims on the attention of the public, now that Parliament is assembled, and that the branch of police to which it refers is to be taken into consideration. In what is subjoined, Mr. Beaumont undertakes to expose, in a compendious form, a few of the leading grievances experienced under the existing system; and, in a second paper, which we shall print next week, Mr. B. examines the excuses which are offered for its continuance.]

THE *increased price and deteriorated quality* of the national beverage, in consequence of the abuse of the licensing system, are facts undoubted. The Report of the Committee of the House of Commons complains of "the investment of very large capitals in the purchase of licensed houses by brewers"—"which creates a necessity of selling at such a price as may secure a *trade interest* on money so advanced, or indemnity to the purchasers, against the large sums they may be obliged to pay for licensed houses." "A brewery, supported by purchased public houses, must deteriorate the quality of their beer—the poor must be content with such liquor as is retailed at the licensed houses, whatever may be the quality, the price, or the measure." The Resolutions of the Anti-monopoly Meeting also declare, "that better beer than is now sold by some of

the principal brewers at 6d. per quart, would be generally sold at 5d. if the trade of retailing beer were free; and that, in some parts of the country, the sacrifice is still greater; that the extra price paid in consequence of the licensing system, in its effects on the expenditure of a labouring man, is equal to a property tax of ten per cent. on his wages, is sufficient for the support of a child independently, or to pay for the entire clothing or lodging of his family, and, in the aggregate, amounts to an annual levy of 850,000l. upon the industrious classes of the metropolis, and of upwards of four millions sterling upon the inhabitants of the country generally."

The *dependent and oppressed condition* of that large class of tradesmen, called *Licensed Victuallers*, next demands observation. Liable to be driven from his occupation and his home, without a trial, a hearing, or even an accuser—or else protected in the worst practices, in defiance of the complaints of the public, the Victualler is the victim of oppression, or the puppet of patronage—a mere pot-boy to the brewers.

The *house-owner* is in a similar manner exposed to unmerited injury if he incurs the personal enmity, or objects to feed the desires of the licensing interest. An inn, or public-house of great value, denied a license, is rendered useless; and an estate, consisting of many houses, forbidden the necessary convenience of a victualling-house, becomes depopulated; and another estate, supplied with the convenience, is rendered attractive, and greatly increased in value, upon the ruin of the former.

The *encouragement given to excessive drinking*, under the operation of the licensing system, is a grievance of the most serious tendency. As the corrective power of this system is in force only on one day in the year, a wide range of time is given to disorders, free from the chance of impediment. And when the licensing day comes, if the victualler is not already under protection, and does not mean to shift the tenant, the obvious course is to interest the support of the brewer of chief influence in the district; and, as his professional opinion of a good house rises in proportion to the quantity of liquor procured to be consumed in it—no matter how—the publican's passport to protection, as well as profit, consists in producing a large consumption of liquor—not in preserving a due regard to sobriety and good order.

The *corruption and degradation of the magisterial office* is an obvious result of arbitrary licensing. Not only does this money-making and malice-feeding power corrupt some who enter into the commission with clear hands, but it excites intriguing, mercenary, and tyrannical individuals to make interest to get into the commission, in which object many succeed. The association thus formed, and the disreputableness thus occasioned, induce many others of liberal and enlightened views, to decline an office which

otherwise they would fill with advantage to the public.

The *patriotism and allegiance of the subject* are also shaken by the arbitrary licensing power. In return for the discharge of these duties, the subject has a right to protection, but when he finds obscure, ignorant, and unworthy men endowed with authority to sequester his property, just as their interest or inclination prompts them, and that, however erroneous, however corrupt their act, no earthly means of redress are left to him, he does not enjoy protection, but he finds persecution. While the Legislature provides against the event of the subject's suffering from an erroneous judgment, by allowing objections to jurymen, and also *a new trial, or an appeal* to a higher court if a jury errs, or if those pure and enlightened characters, the judges, err; and by forbidding the sovereign himself from touching the chattels of a pauper, strange it is that it should so long suffer such impure and such unenlightened characters, as the licensing justices are frequently seen to be, to riot on the property of the subject, with no other guide than their own wills—no other control than that of their own consciences. A man with the title of justice, brought to the bar of his country for misdeeds, may exercise the rod of arbitrary licensing power for life over the estate of this accuser, and use it evidently as an instrument of revenge, without the sufferers being allowed to object to the partial and oppressive jurisdiction.

NEW PUBLICATIONS.

[January 26 to February 2, 1819.]

DRAMA.

Tragedies. By Hannah More. 8vo. 7s.

HISTORY.

The History of France, Civil and Military. By the Rev. Alexander Ranken, D.D. 6 vols. 2l. 8s.

LAW.

Reports of Cases in the King's Bench, in Michaelmas Term, 59 Geo. III. By R. V. Barnwall and E. H. Alderson. Vol. 2 part 1. 8vo. 7s. 6d.

Reports of Cases in the High Court of Chancery. By T. H. Merivale. Vol. 3, part 3. 8vo. 6s.

A Supplement to the Digested Abridgment of the Statute Law of England and Ireland. By Joseph Gabbett, Esq. 8vo. 15s.

MISCELLANEOUS.

Stories for the middle Ranks of Society, and Tales for Common People. By Hannah More. 2 vols. 14s.

Tables of Simple Interest. By David Booth. 4to. 3l. 3s.

Two Essays; one upon single Vision with two Eyes; the other on Dew. By the late W. C. Wells. 8vo. 12s.

A New Translation of the Nichomachean Ethics of Aristotle. 8vo. 8s.

NOVELS.

The Charms of Dandyism. 3 vols. 12mo. 1l. 1s.

Emily; or, the Wife's First Error, and other Tales. By Elizabeth Bennett. 4 vols. 12mo. 1l.

PERSPECTIVE.

A Treatise on Practical Perspective. By W. Williams. 8vo. 1l. 1s.

POETRY.

The Stage; a Poem. By John Brown. 12mo. 2s. 6d.

Montfort; a Poem, in Three Cantos. By W. H. Harrison. 5s.

Messiah, in Twenty-four Books, By Joseph Cottle. Part 2. 8vo. 6s.

POLITICS.

The Analysis of Human Nature; or, an Investigation of the Means to improve the Condition of the Poor, &c. By S. Phelps. 2 vols. 8vo. 1l. 1s.

THEOLOGY.

The Hebrew Interpreter. By A. Alexander. No. 1. 8vo. 1s.

Discourses on the Designs of Christianity. By D. Dewar, L. L. D. 8vo. 12s.

The Drama.

SURRY THEATRE.—We recur to the performances of this house with pleasure. There is an indefatigable industry, and a desire to merit approbation on the part of Mr. Dibdin, which fully entitle him to the support of the public, and which, we think, cannot fail, in the end, to insure it. We visited his theatre, on Thursday, the 28th of January, to witness his new romance of the Heart of Mid-Lothian, a production, the merits of which, however, principally belong to the novelist. But Mr. D. is not, on this account, less deserving of praise, for Rob Roy Macgregor, at Covent Garden, is nothing more than an adoption from the original work, and in both instances, it is the taste which first selected the subjects for theatrical representation, that ought to command our applause. The performance of the piece in question, is in the highest degree, creditable and imposing. Mrs. Egerton has been engaged here, and depicts, in glowing colours, the singular transitions of feeling in Madge Wildfire, with considerable talent—the most pathetic part of her performance was her death, which told upon the audience with great effect; her last words were uttered in a tone that vibrated to the heart. But though Mrs. Egerton was very effective, we, on the whole, were more taken with the unaffected and really touching representation of Jeannie Deans, by Miss Taylor—we do not here speak from any private feelings of partiality, for we never saw the young lady in question, but once or twice before, and then we did not greatly admire her—but Jeannie Deans will establish her reputation with all who are capable of appreciating genuine and unsophisticated acting. Her retiring modesty, and the delicate expression of her feelings, were delightfully in unison with the character; and the tinge of the Scotch dialect throughout, added to the pleasing effect. Her scene with the Laird, where he, at first, refuses to lend her the money for her journey to London, was exquisitely beautiful; her gentle accents, and her soft pleadings were exceedingly affecting, and her after interviews with the Duke of Argyle and with the Queen, were supported in a style which did not detract from the impression created by her talents in the former instance. We hope Miss Taylor will not long be confined to the sphere in which she at present moves, but that she will be transplanted to a richer soil, where her merits may take deeper root, and bloom to a more

abundant harvest of applause. The Duke of Argyle and the Laird were amusingly hit off, by T. P. Cooke and Fitzwilliam, and the rest of the performers were well adapted to their respective parts. The scenery, though very good, must not be compared to that at Covent Garden. The Surry Theatre does not require extravagant puffs to establish its reputation. The house, became crowded as the entertainment proceeded. W. B.

Original Poetry.

ON THE EXECUTION OF ——— VOWEL.

As sober Will,
Along Snow Hill,
Pursued his daily haunt;
He spied Tom Shears,
Where Newgate rears,
Her uninviting front.

"Why all this crowd?"
He cried aloud,
"To see one *Vowel* die."
"I hope," cried Tom,
With look forlorn,
"'Tis neither *you* nor *I*."

MAD BULL ON THE ROYAL EX- CHANGE.

T'OTHER day it was said, that a bull, on the
'Change,
Occasion'd a great consternation;
But surely this circumstance cannot be
strange,
Nor should cause much alarm to the nation;
For look ye,—each day, a group may be
shown,
Of huge growling Bears round a Bull;
A Bull, although foreign, has often been
known
To have made Johnny Bull a great gull!—
Nay more,—it is strongly conjectur'd likewise,
That to keep the rude Bears in subjection,
He swears, *py his Got*, he will make the stocks
rise
With the aid of his pow'rful connexion.
Now who does he mean? Nay it cannot be
Van,
Who is kept in the rear of this scheme;
Nor the old woman over the way that should
plan
A system so "wrought in the extreme!"
No; 'tis a child of his own—like the good man
of Ross,
He means to do good with his wealth!
Then perish the Bears,—let him each of them
toss,
To the Bull, then, long life, strength, and
health.
24th Dec. 1819. B. O.

ENIGMA.

In every period of mankind, on me
Lovers have prest their lips with ecstasy;
Before me papists kneel, admire, adore,
And mercy from a pow'r supreme, implore;
Artists by me, their bread and fame obtain,
The virtuosi wealth and influence gain;
Infants espouse me, ere they language learn;
And eyes of children fondly to me turn:

I live in memories, yet in rooms am seen;
Endless varieties of me have been;
Speech I have not, yet virtues I convey,
And vices too, but most in France, some say:
Whate'er in poetry best represents
Descriptive nature, or the mind's intents;
The various arts and sciences I show,
But most to genius my perfection owe:—
I'm what a book should be, and yet I give
Life to the dead, and death to those that live;
Mine, the sublime, the beautifully grand,
Is best beheld from most exalted land;
Earths, oceans, skies, beneath, around, above,
Belong to me in every change they prove;
In fine, then I have life;—now, reader, tell
My name, and on my charming beauties dwell!
RICHARD.

VENUS.

THERE was a bower, form'd of the willow,
Whose pendant branches quietly sipp'd the
stream
That murmur'd at its feet. Many a flower
Of new-born beauty grew with fragrance there.
The rose, the jasmine, and eglantine
Mixt their delicious sweets; the zephyrs flew,
And caught them, while escaping from the
buds
To fan and scent the air. Naught lovelier
Have eyes beheld.
It chanc'd, one eve, what time
The feather'd tribe, to taste the soothing balm
Of sleep, to groves repair, and golden rays
Grow fainter where the sun had disappear'd,
That Venus came to breathe the lucid coolness
Of the roseate bower. 'Twas silence all.
Down on a flow'ry bank she stretch'd along,
Clad only in the snowy robe that Nature gave;
Her beauteous bosom, soft as is the down
On a dove's breast, and fairer than the ray
Of midnight's lamp, glow'd with ecstatic fire,
And throbb'd with love's own rapture. Then
her eyes,
Of diamond's blaze, shot their delightful rays
So languishingly sweet, that all seem'd heaven
On which their brilliance fell; her pouting
lips,
Like coral, O! what nectar glitter'd there,
Lit with the lustre of her own bright orbs!
The zephyrs fann'd her auburn locks about,
And twin'd themselves among her wanton
tresses.
Oh! and her form, so exquisitely beautiful;
So ivory-turn'd, so fair, so smooth her skin,
That Nature surely lent her cunning'st art
In forming what was lovely!—
I deem'd she slept,
When from her liquid eyes such light'ning flew,
That, as if by necromantic spell, I felt
The shaft of rapture pierce my heart, and,
Like the vernal blossoms scatter'd by the
breeze
Of winter on the barren waste, I felt
My senses fly.—
G. B.

MY TEA-TABLE.

Tune,—*"A Winter Evening."*
"While winds frae aff Ben Lomond blaw,
And bar the door wi' driving snaw,
And hinge us o'er the ingle;
I sit me doon to pass the time,
And spin a verse or twa o' rhyme,
In hamely westlin jingle."—Burns.

THE whistling rain all o'er the plain
Pelts down a rattling roaring blast,—
Your work give o'er, and shut the door,
And draw the curtains snug and fast;

And bring a light to chase the night:
And make a roaring fire up, O;
The billet broils—the kettle boils,
Now for the jingling tea-cups, O,
To cheer the night.
Hark how the wind roars!

The giddy world may all be twirl'd
Far off; by light of pleasure's e'e,
I'll sit me down—shake hands with town,
And sip my tea right cheerfully.
Let sots retire to alehouse fire,
And bathe them in their "nappy. O,"
They're welcome to't—I will not do't,
Gi' me a nice wee drappy, O,
O' good young hyson.
Ma'am, I thank you.

The great may dine, and tippie wine,
'Till purple day shall intervene, ah;
Hunt may spout for rabble rout
'Till Boney 'scapes from Saint Helena;
I shall never, never, never
Wish to join such company, O,
Mine's the wish for good big dish
Of—Heaven bless it!—nice hot tea, O,
This bitter night.
Very good, Ma'am thank you.

Kean may bore 'em, at the Forum,
With his metal-hearted Roman*;
Miss O'Neill may say "I feel
I don't much like a *certain woman*;"
I ne'er will crack my toes or back
To push into the pit to see, O;
For those enough who love such stuff—
For me?—Another cup of tea, O,
While the rain rattles;
More toast, if you please.

The Dandy may go, and lace stay, so
That it may cry out "Pinch, tear—crack, O!"
Whishart may go prate away
In praise of H—e, or tobacco;
I'd not linger to put finger
In such pies at all, Sir, O,
While I've the luck by fire to tuck
My thumb within my saucer, O,
This windy night.

Excellent—Another of course, Ma'am.

While some are coaching, others poaching,
Dark, dull, dreary, wet, and lost;
Or the billow press (cold pillow!)
Of the raging sea up toss'd,
How pleasant I do sit me where
The cheerful fire is blinking, O,
Blessing my nook, arm-chair, and book,
That glad me while I'm drinking, O,
This pleasant dish.

Better still!—Another, of course, Ma'am.
My curse on those, our bitter foes,
Who give us leaves of sloe and ash, O;
Oh! could I thrash them at a crash
They shouldn't want the poet's lash, O;
Give 'em doses—tweak their noses
Till their eyes run down wi' grief, O,
Had I a strong stick, I'd make 'em kick,
And eat their stuff of every leaf, O,
This bitter night!

One more cup, and I've done.

Let Byron roam away from home,
Where Grecian suns light up the morn, O;
I'll ne'er flinch from mine *one-inch*,
While I've a pleasant chimney-corner.
By river Styx! that cup made six—
And, as the kettle's drain'd of water,
Suppose we sing "God Save the King!"
Lord Hastings, and the India charter,
This bitter night?

Delightful! BERRA.

TO CORRESPONDENTS.

C. W. on the British Gallery, and CAMBRANA, No. 11, in our next. Both arrived, unfortunately, too late for insertion this week.

In our last, p. 71, col. 1, for "title ornamented," read "little-ornamented; col. 2, for "W. R." read "W. K."

Complete Sets of the LITERARY JOURNAL, No. 1, to No. 40, may now be had of the Publisher, in separate Numbers, price Sixpence each: Quarterly Parts I and III, price Seven Shillings and Sixpence each, and Part II, price Eight Shillings; or entire Volumes, handsomely half-bound, in green roan, uncut, price Twenty-five Shillings. The Quarto Map of the Polar Regions, printed in No. 2, may also be had separately.

ADVERTISEMENTS.

TRIAL BY BATTLE.

Published this day, by Baldwin, Cradock, and Joy Paternoster Row, and Clarke and Sons, Portugal Street, Lincoln's Inn Fields,

I.

8vo. price 7s. 6d.

An ARGUMENT for construing largely the Right of an Appellee of Murder to insist on TRIAL BY BATTLE; and also for abolishing Appeals; with Notes, and an Appendix, containing a Report of a Debate in the House of Commons, on a Clause for Abolishing the Appeal for Murder in the British North American Colonies, &c. &c.

By E. A. KENDALL, Esq. F. A. S.

Third Edition, enlarged. Illustrated by a Drawing of the time of Henry III, still preserved in the Record Office, in the Tower of London, representing a Judicial Combat fought on an Appeal.

"I am for taking away the Appeal for Murder entirely; but I am not for taking it away in part."—*Mr. Fox.*

"We are got now on the most important question that can come on."—*Mr. Skynner.*

"It seems an acute, vigorous, and spirited production; replete with matter of curious research; and every where bespeaking a fearless independence of mind."

"That some change or other ought to be made in the Law of Appeal, his Argument cannot fail to enforce on the mind of every unprejudiced reader; and in this view, his Work seems to us very valuable."

Quarterly Review, February, 1818.

"His disquisition is written with much vigour, and evinces great research. Nothing that can illustrate this obscure subject seems to have escaped his notice; and the historian and legal antiquary may derive no small information from his labours."

Literary Panorama, April, 1818.

II.

Preparing for Publication, (By the same Author,)

THE HISTORY, REASON, and LAW of TRIAL by BATTLE; including an Exposition of the Nature of APPEALS OF FELONY and WRITS OF RIGHT; as also some inquiry into the Administration of Civil and Criminal Justice in Europe, during the Middle ages, and into the Ancient and Modern Notions of Trial by Jury, and of the Theory of Evidence.

"A message from the Lords, by Attorney and Mr. Serjeant Crook:—An Act to Abolish all Trials by battle:—committed to Sir Edward Coke, Mr. Noy, Sir William Fleetwood, all the lawyers of the House, and soldiers."—*Journals of the House of Commons, March, 22, 1623.*

"Mr. Solicitor reporteth the Bill of Battle,—That the Committee thinketh it not fit it should proceed; but rest to be advised of"—*Ibid. May 29.*

III.

COUNSEL FOR PRISONERS.

In a few days will be published, (By the same Author,)

A LETTER to SIR SAMUEL SHEPHERD, Knt. M. P. His Majesty's Attorney-General, on the Administration of Criminal Justice in the English Courts, and particularly on the NON ALLOWANCE OF PLEADINGS OF COUNSEL FOR DEFENDANTS, in Prosecutions for Felony by Indictment.

Audi alteram partem.—Hear both sides.

"I apprehend that Criminal Laws were made to save the lives of persons, and not to destroy them."

Mr. Attorney Stanley.

IV.

Speedily will be published, (By the same Author,)

COLONIAL INSTITUTION, &c.

A PROPOSAL for Establishing in London a New Philanthropical and Patriotic Institution, to be called, THE PATRIOTIC METROPOLITAN COLONIAL INSTITUTION, for assisting new Settlers in His Majesty's Colonies, and for encouraging new Branches of Colonial Trade; a Proposal for establishing New and Distinct Colonies for the Relief of the HALF-CASTS OF INDIA, and the MULATTOES OF THE WEST INDIES; a Postscript on the Benefits to be derived from Establishing FREE DRAWING SCHOOLS, and SCHOOLS OF CHEMISTRY and the MATHEMATICS; and on other Means of Advancing the National Industry, Numbers, and Greatness.

"The glory of a kingdom is men and money; England hath, in a competent proportion, the blessings of both, but might be improved to more than double; for, at the most moderate computation, it is not half peopled; and since there is so much wanting in number, the best way to supply that deficiency is by industry, which would not only increase the treasure of the kingdom, but, that which is the more valuable treasure, men."

"Now, as this employing all sorts of people would increase the strength of the kingdom by its numbers, so would it also as well the riches and stock of it, by its treasure. Every bee adds some honey to the hive."

"But the common plea of idlers is, that they would work if any would employ them; which seem to charge the government with omission, in not providing employment for all ages and sexes, as to which the laws already made (we see) do not."

A Discourse of the Necessity of Encouraging Mechanic Industry. London, 1620.

V.

UNITED STATES OF AMERICA.

Speedily will be published, (By the same Author,)

An INQUIRY into the RESOURCES, Present and Prospective, of the United States of America, and into the Necessity and Means of reducing both; with Maps, and an Appendix, containing a Copy of a Paper presented, in December, 1812, to the Right Hon. Earl Bathurst, &c. &c. entitled A PROPOSAL FOR THE CONQUEST OF LOUISIANA.

"The British threatened to dispossess us of New Orleans, and shut at once the great outlet of the Western Country." *National Intelligencer, July 7, 1818.*

"New York, at some future day, will be comparatively but the second city in the Union, in the value and amount of her exports: New Orleans will be the first." *Richmond Compiler, 1818.*

SCHOOL FOR DRAWING AND PAINTING,

WHERE the Art of Design, in its most simple and specific meaning—the Delineation of Objects, is taught on correct principles. Possessing every requisite for the Study of the HUMAN FIGURE, and the various other Branches of the FINE ARTS, and forming an Elementary School for the Royal Academy, the Elgin Marbles, and British Institution.

Terms may be known at No. 50, Great Russell Street, Bloomsbury Square, opposite the British Museum.

NORTH POLE.

This Day is published, price 1s. 6d. plain, and 2s. 6d. coloured,

A MAP of the WORD, on a NEW, or NORTH POLAR PROJECTION; comprising the entire Surface of the Globe, from the North Pole to the Latitude of Cape Horn; exhibiting all the known Continents and Islands, as they lie surrounding the North Pole, and the actual routes of Modern Navigation from Europe to China and the Pacific Ocean, by the Cape of Good Hope, and Cape Horn respectively; as also the supposed route by Behring's Straits, or Straits of Anian, across the Polar Seas; and designed to assist those who are not familiar with Geographical Studies, in comprehending the advantages that are anticipated from a successful termination of the present Expeditions towards the North Pole; engraved for the Literary Journal, No. 11.

INSTITUTION for the GRATUITOUS

CURE of CATARACT, No. 12, Windmill Street, Tottenham Court Road, under the Patronage of His Royal Highness the Prince Regent, and conducted by JOHN STEVENSON, Esq. Great Russell Street, Bedford Square, Surgeon-Oculist and Aurist to their Royal Highnesses the Duke of York and the Prince Leopold of Saxe Cobourg; Member of the Royal College of Surgeons; and Lecturer on the Anatomy, Diseases, and Operations, of the Eye and Ear.

THIS Institution, since its establishment, has been the means of restoring to sight a very considerable number of indigent persons, at various periods of life, from infancy to extreme old age, who were either born, or afterwards became blind with Cataract. The practice of this Institution is not guided by an unvarying adherence to any one mode of operation, that mode being in every case preferred which Mr. Stevenson has ascertained, by experience, to be best suited to the different species and peculiar state of the disease.

Patients of either sex, and at all ages, from any part of the United Kingdom, and with no other recommendation than that of poverty, may obtain the necessary information respecting admission, by applying personally to the Matron, in Windmill Street; or to Messrs. Griffiths, 13, Tottenham Court Road, the Apothecaries to the Institution, every Monday, Wednesday, and Friday Morning, before Twelve o'clock. But to prevent disappointment to those who, from ignorance of the specific nature of the Charity, indiscriminately seek its assistance for every variety of ocular complaints, it should be distinctly understood, that this Institution is confined exclusively to those cases of lost or impaired sight, of which Cataract is the real or supposed cause. Mr. Stevenson's private engagements in the medical and surgical treatment of Diseases of the Eye and Ear obliging him, in future, to limit his gratuitous services to this particular ailment of the Organ of Vision.

Although Mr. Stevenson first organized, and has since supported this Institution at his own individual expense, the increasing number of applicants for relief admonish him no longer to refuse accepting, as he has hitherto done, the proffered pecuniary contributions of such as may feel a gratification in co-operating with him in the object of this Institution.

London, Nov. 4, 1818.

* The History, Symptoms, Causes, different kinds of Cataract, and most appropriate Treatment for each, are fully described in the Second Edition of Mr. Stevenson's "Practical Treatise on Cataract," of which a Third Edition, with the Author's latest improvements, is preparing for the Press.

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